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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, May 8, 2007
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008

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DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 27

[DHS–2007–0025]

Notice to Facilities to Begin Registration for Chemical Security Assessment Tool

AGENCY: Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS or Department) recommends that chemical facilities begin the registration process to gain access to the Chemical Security Assessment Tool (CSAT) system. This is a voluntary registration process for facilities that think they may be covered by DHS's Chemical Facility Anti-Terrorism Standards located in 6 CFR Part 27 and that would like to initiate the process to determine whether or not they are covered by 6 CFR Part 27.

DATES: Effective April 25, 2007.

FOR FURTHER INFORMATION CONTACT: Matthew Bettridge, Chemical Security Regulatory Task Force, Department of Homeland Security, 703–235–5263.

SUPPLEMENTARY INFORMATION: Section 550 of the Homeland Security Appropriations Act of 2007 provided the Department of Homeland Security (DHS or Department) with authority to promulgate ''interim final regulations'' for the security of certain chemical facilities in the United States. *See* Pub. L. 109–295, sec. 550. On December 28, 2006, the Department issued an Advance Notice of Rulemaking seeking comment on the significant issues and regulatory text (*see* 71 FR 78276), and on April 9, 2007, the Department published an Interim Final Rule establishing anti-terrorism standards for chemical facilities (*see* 72 FR 17688). The Interim Final Rule is effective June 8, 2007.

Although the Interim Final Rule does not go into effect until June, DHS strongly recommends that facilities begin the registration process as soon as possible to gain access to the Chemical Security Assessment Tool (CSAT) system. The CSAT is a suite of four applications, including the User Registration, Top-Screen, Security Vulnerability Assessment, and Site Security Plan, through which the Department will collect and analyze key data from chemical facilities. Facilities will submit information to DHS through an on-line, web-based component of the CSAT system. CSAT user registration is the first step in the process of determining whether or not facilities are covered by the Interim Final Rule.

In the course of the CSAT user registration process, facilities will provide basic information to DHS (*e.g.*, the name, contact information, and mailing address for the submitter), and DHS will, in turn, provide each approved CSAT user with a user identification and password, so that they can access the CSAT system. DHS will provide approved users with user identifications and passwords in the weeks just before the interim final rule becomes effective (*i.e.*, June 8, 2007).

By beginning and encouraging early user registration, DHS believes that it will facilitate the efficient roll-out of the Interim Final Rule. The registration process can take some time, as there are several parts involved: Potential users must complete an online form, DHS must create an account, and potential users must then sign the user registration form and return it to DHS. Facilities who have registered early will have completed this process and will be able to begin completing the Top-Screen as soon as the rule goes into effect.

Until the effective date of the rule, this is a voluntary registration process for facilities that think they may be covered by DHS's Chemical Facility Anti-Terrorism Standards located in 6 CFR Part 27 and that would like to initiate the process to determine whether or not they are covered by 6 CFR Part 27. By registering with DHS, facilities will obtain access to the CSAT system, so that they can obtain a user registration and password, complete the Top-Screen, etc. Note that this **Federal Register** Notice is not notice under 6 CFR 27.200(b) that DHS is seeking information from certain chemical facilities. This notice does not impose any obligation or requirement on any party. Instead, it simply provides written notice of the Web site available for parties voluntarily choosing to access the CSAT system.

To begin the CSAT registration process, facilities should go to *http://www.DHS.gov/chemicalsecurity* and follow the instructions for gaining access to the CSAT system. DHS has activated this CSAT Web page concurrent with its publication of the interim final rule on April 9, 2007. In addition, DHS notes that it has established a help desk for CSAT users. The phone number for the help desk is located on the CSAT Web page.

Robert B. Stephan,

Assistant Secretary for Infrastructure Protection, Department of Homeland Security.

[FR Doc. E7–7923 Filed 4–24–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9315]

RIN 1545–BD10

Dual Consolidated Loss Regulations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations (TD 9315) that were published in the **Federal Register** on Monday, March 19, 2007 (72 FR 12902) regarding dual consolidated losses. Section 1503(d) generally provides that a dual consolidated loss of a dual resident corporation cannot reduce the taxable income of any other member of the affiliated group unless, to the extent provided in regulations, the loss does not offset the income of any foreign corporation.

DATES: These correcting amendments are effective April 25, 2007.

FOR FURTHER INFORMATION CONTACT: Jeffrey P. Cowan, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under section 1503(d) of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9315) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1503(d)–0 is amended by revising the entries (1) and (2) of Section 1.1503(d)–8(b). The revisions read as follows:

§ 1.1503(d)–0 Table of contents.

* * * * *

§ 1.1503(d)–8 Effective dates.

* * * * *

(b) * * *

(1) Reduction of term of agreements filed under §§ 1.1503–2A(c)(3), 1.1503–2A(d)(3), 1.1503–2(g)(2)(i), or 1.1503–2T(g)(2)(i).

(2) Reduction of term of agreements filed under §§ 1.1503–2(g)(2)(iv)(B)(*2*)(*i*) (1992), 1.1503–2(g)(2)(iv)(B)(*3*)(*i*), or Rev. Proc. 2000–42.

* * * * *

■ **Par. 3.** Section 1.1503(d)–5 is amended by revising the last sentence of paragraph (a), the second sentence of paragraph (c)(4)(i)(A), and the only sentence of paragraph (d) to read as follows:

§ 1.1503(d)–5 Attribution of items and basis adjustments.

(a) * * * The rules in this section apply for purposes of §§ 1.1503(d)–1 through 1.1503(d)–7.

* * * * *

(c) * * *

(4) * * *

(i) * * *

(A) * * * For purposes of determining items of income, gain, deduction, and loss of the domestic owner that are attributable to the domestic owner's foreign branch separate unit described in the preceding sentence, only items of income, gain, deduction, and loss that are attributable to the domestic owner's interest in the hybrid entity, or transparent entity, as provided in paragraph (c)(3) of this section, shall be taken into account.

* * *

* * * * *

(d) * * * The fact that a particular item taken into account in computing the income or dual consolidated loss of a dual resident corporation or a separate unit, or the income or loss of an interest in a transparent entity, is not taken into account in computing income (or loss) subject to a foreign country's income tax shall not cause such item to be excluded from being taken into account under paragraph (b), (c), or (e) of this section.

* * * * *

■ **Par. 4.** Section 1.1503(d)–7(c) is amended by revising the last sentence of paragraph (iv) of *Example 5* and the last sentence of paragraph (C) of *Example 40*(ii).

The revisions read as follows:

§ 1.1503(d)–7 Examples.

* * * * *

(c) * * *

Example 5. * * *

(iv) * * * In addition, pursuant to § 1.1503(d)–6(f)(1) and (3), the deemed transfers pursuant to Rev. Rul. 99–5 as a result of the sale are not treated as triggering events described in § 1.1503(d)–6(e)(1)(iv) or (v).

* * * * *

Example 40. * * *

(ii) * * *

(C) * * * Pursuant to § 1.1503(d)–6(j)(1)(iii), the domestic use agreement filed by the P consolidated group with respect to the year 1 dual consolidated loss of the Country X separate unit is terminated and has no further effect.

* * * * *

■ **Par. 5.** Section 1.1503(d)–8 is amended by revising the heading texts of paragraphs (b)(1) and (2), the only sentence of paragraph (b)(1), the first sentence of paragraph (b)(2) and the last sentence of paragraph (b)(4).

The revisions read as follows:

§ 1.1503(d)–8 Effective dates.

* * * * *

(b) * * *

(1) *Reduction of term of agreements filed under §§ 1.1503–2A(c)(3), 1.1503–2A(d)(3), 1.1503–2(g)(2)(i), or 1.1503–2T(g)(i).* If an agreement is filed in accordance with §§ 1.1503–2A(c)(3), 1.1503–2A(d)(3), 1.1503–2(g)(2)(i), or 1.1503–2T(g)(2)(i) with respect to a dual consolidated loss incurred in a taxable year beginning prior to the application date and an event requiring recapture with respect to the dual consolidated loss subject to the agreement has not occurred as of the application date, then such agreement will be considered by the Internal Revenue Service to apply only for any taxable year up to and including the fifth taxable year following the year in which the dual consolidated loss that is the subject of the agreement was incurred and thereafter will have no effect.

(2) *Reduction of term of agreements filed under §§ 1.1503–2(g)(2)(iv)(B)(2)(i) (1992), 1.1503–2(g)(2)(iv)(B)(3)(i), or Rev. Proc. 2000–42.* Taxpayers subject to the terms of a closing agreement entered into with the Internal Revenue Service pursuant to §§ 1.1503–2(g)(2)(iv)(B)(*2*)(*i*) (1992), 1.1503–2(g)(2)(iv)(B)(*3*)(*i*), or Rev. Proc. 2000–42 (2000–2 CB 394), see § 601.601(d)(2)(ii)(*b*) of this chapter, will be deemed to have satisfied the closing agreement's fifteen-year certification period requirement if the five-year certification period specified in § 1.1503(d)–1(b)(20) has elapsed, provided such closing agreement is still in effect as of the application date, and provided the dual consolidated losses have not been recaptured. * * *

* * * * *

(4) * * * Notwithstanding the general application of this paragraph (b)(4) to events described in § 1.1503–2(g)(2)(iv)(B)(*1*)(*i*) through (*iii*) that occur after April 18, 2007, a taxpayer may choose to apply this paragraph (b)(4) to events described in § 1.1503–2(g)(2)(iv)(B)(*1*)(*i*) through (*iii*) that occur after March 19, 2007 and on or before April 18, 2007.

* * * * *

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E7–7782 Filed 4–24–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9315]

RIN 1545–BD10

Dual Consolidated Loss Regulations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations (TD 9315) that were published in the **Federal Register** on Monday, March 19, 2007 (72 FR 12902) regarding dual consolidated losses. Section 1503(d) generally provides that a dual consolidated loss of a dual resident corporation cannot reduce the taxable income of any other member of the affiliated group unless, to the extent provided in regulations, the loss does not offset the income of any foreign corporation.

DATES: This correction is effective April 25, 2007.

FOR FURTHER INFORMATION CONTACT: Jeffrey P. Cowan, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 1503(d) of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9315) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9315), which was the subject of FR Doc. E7–4618, is corrected as follows:

On page 12904, column 1, in the preamble, under the paragraph heading ''*C. Elimination of the Consistency Rule*'', third line from the bottom of the paragraph, the language ''application of the dual consolidated'' is corrected to read ''application of the dual consolidated loss''.

LaNita Van Dyke

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E7–7780 Filed 4–24–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AL43

Administration of VA Educational Benefits—Centralized Certification

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule a proposed rule amending Department of Veterans Affairs (VA) rules governing certification of enrollment in approved courses for the training of veterans and other eligible persons under the education benefit programs VA administers. Under this rule, educational institutions with multi-state campuses may submit certifications to VA from a centralized location.

DATES: This final rule is effective June 25, 2007.

FOR FURTHER INFORMATION CONTACT: Lynn M. Nelson, Education Advisor, Veterans Benefits Administration, Department of Veterans Affairs (225C), 810 Vermont Avenue, NW., Washington, DC 20420, 202–273–7187.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on February 22, 2006 (71 FR 9052), VA proposed a rule that would amend subpart D of 38 CFR part 21 regarding approval criteria for branches and extensions of educational institutions. VA is adopting as final the proposed rule with only minor non-substantive changes. The rule permits educational institutions with multi-state campuses to submit required certifications to VA from a centralized location (centralized certification).

Interested persons were given 60 days to submit comments on the proposed rule. VA addresses the comments below.

I. Background

VA initially published a notice of proposed rulemaking (NPRM) in the **Federal Register** on June 30, 2003 (68 FR 38657), proposing to amend VA regulations to permit centralized certification of courses. VA received several comments concerning the NPRM. Many of the comments opposing the proposed amendments came from individual State Approving Agencies (SAA), and a national association of SAAs. VA contracts with SAAs to perform course approval functions under 38 U.S.C. chapter 36. Based on the comments received, VA withdrew the initial NPRM and published a new NPRM taking into consideration all the comments received. (The new NPRM was published in the **Federal Register** on February 22, 2006 (71 FR 9052) for comment.)

II. Favorable Comments on NPRM Published February 22, 2006

VA received four favorable comments. Two were from educational institutions, one was from a national association of SAAs, and one was from an individual SAA.

One commenter, the national association, supported the proposed rule and commended VA for addressing the issues raised in response to the prior NPRM. In addition, the commenter requested that VA amend proposed 38 CFR 21.4266(f)(3) to add a requirement for teaching locations that do not have a certifying official present. Specifically, the commenter requested that VA require the educational institution's designated employee, who has access to VA's Internet-based educational certification application for purposes of providing certification information to VA, to also have access to other records the SAA may require. The commenter suggested that the designated employee should also have access to and provide academic records information to veterans, servicemembers, reservists or other eligible persons. (Another SAA individually submitted a similar comment.)

While VA understands the commenter's concern, we did not make the recommended change in this final rule because VA already has a regulation (38 CFR 21.4209) that requires educational institutions to make certain records available for review by VA and duly authorized Government representatives, such as SAAs. Since § 21.4209 presently requires institutions to make the records available, VA believes that the change suggested by the commenter is unnecessary. If the educational institution does not make the required records available, § 21.4209(e) provides that such failure is grounds for discontinuing the payment of educational assistance allowance (or special training allowance). An institution that does not comply would also be subject to losing approval of its courses for veterans' training.

III. Unfavorable Comments on the NPRM Published February 22, 2006

One commenter, a State veterans affairs office, opposed the NPRM speculating that the amendments would be a step backward in maintaining the quality of education and veteran education services and would lead to a decline in service to veterans. As stated in the preamble of the NPRM at 71 FR 9052, 9053–9058, and despite the commenter's concerns, VA has no evidence that service would diminish if schools submitted certifications from a central location.

In contrast to the above commenter's critical comment, we also received favorable comments from school officials asserting that centralization would improve service to veteran students. These officials stated that they could maintain a better trained staff if they were permitted to centralize their

certification activities. Employees who serve as certifying officials at smaller campuses often have other duties and, thus, do not specialize in VA certifications. The officials maintained that their designated employees could specialize in those duties and better serve VA beneficiaries if they could centralize the schools' certifications.

In opposing the rule, the State commenter suggested that an SAA's oversight powers might be impaired by the rule. The commenter cited as an example of an oversight issue, an educational institution with interstate campuses that used inappropriate teaching methods and unqualified faculty. The SAA withdrew approval for the courses in the State and notified other SAAs that had campuses of the same educational institution in their states. The other SAAs conducted reviews and also withdrew approval for VA educational beneficiaries' training. SAAs use current law to appropriately disapprove courses upon discovering problems that cannot be corrected by an educational institution. Under this rule, the SAA would still be able to oversee and provide assistance to the various teaching locations within the State. If the educational institution in the commenter's example submitted certifications from one central location or separately from each State, the SAA could still withdraw approval of the teaching locations in the State and notify the other SAAs just as they have in the past under current law. This rule does not remove or change an institution's present ability to approve or disapprove courses. It merely allows an educational institution the flexibility of submitting VA certifications electronically from one central location.

The commenter also expressed concern that certification documents would not be available to the SAA if an educational institution submitted certifications for campuses in the State from another State. In 38 CFR 21.4266(f)(3), we require that educational institutions, which centralize their certifying official functions, must designate employees at teaching locations without a certifying official to provide certification information to eligible persons, VA, and SAAs using VA's Internet-based education certification application. If an educational institution in Texas, with branches in Wisconsin and Maryland, submits all certifications from Texas, the educational institution's designated employees in each of those States, will have access to the relevant certification information.

Another commenter expressed concern that administrative records would not be available to the centralized certifying official. However, § 21.4266(f)(3)(iv) provides that the certifying official has full access to the administrative records and accounts required by § 21.4209 for each student attending the teaching location(s) for which the certifying official has been designated responsibility. The State commenter also suggested that the State's SAA cannot be held contractually accountable for operations outside its borders. However, nothing in this rule would hold any SAA accountable for actions at a branch in another state. The only new provision is that an educational institution may submit VA certifications from a central location if it chooses to do so.

VA made no substantive changes to the NPRM published February 22, 2006, based on the comments.

Paperwork Reduction Act

This final rule contains provisions that constitute collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) in § 21.4266(f). The collections are approved under Office of Management and Budget control number 2900–0073. We display the control number under the applicable regulation text in this final rule.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, or tribal governments, or the private sector.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Existing VA regulations do not permit educational institutions with multi-state campuses to centralize their certifying official functions. Some educational institutions with multi-state campuses requested VA expand current regulations to permit them to centralize their certifying official functions. Since this rule will affect only those educational institutions that choose to centralize their certifying official functions, centralizing such functions would be at the option of the educational institution that wants to consolidate its certifying functions. Those institutions believe centralizing their functions will allow them to better manage and allocate their resources.

The economic effect on small entities would essentially entail a cost savings associated with the consolidation of certifying functions. By centralizing the functions, the institutions desiring this option say they could dedicate less full-time employees to the centralizing duties and at the same time have those employees specialize. According to officials of educational institutions interested in centralizing, their training costs would be reduced by having a centralized staff dedicated to VA certification and serving veterans. The option in this rule, which would liberalize current regulations to permit centralized certification functions, would not impact a substantial number

of small entities. Of the 6,900 post-secondary educational institutions approved by Department of Education for Title IV funds, only three of those institutions commented on the proposed rule. Less than 10 educational institutions have expressed interest in centralized certification, but those that have are very interested in the change that would allow them the option. Pursuant to 5 U.S.C. 605(b), this rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this rule are: 64.117, Survivors and Dependents Educational Assistance; 64.120, Post-Vietnam Era Veterans' Educational Assistance; and 64.124, All-Volunteer Force Educational Assistance. This proposed rule also affects the Montgomery GI Bill-Selected Reserve program and the Reserve Educational Assistance program. There are no Catalog of Federal Domestic Assistance numbers for the Montgomery GI Bill-Selected Reserve or the Reserve Educational Assistance program.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 19, 2007.

R. James Nicholson,

Secretary of Veterans Affairs.

■ For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 21 (subpart D) as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

■ 1. The authority citation for part 21, subpart D, continues to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

■ 2. Revise § 21.4266 to read as follows:

§ 21.4266 Approval of courses at a branch campus or extension.

(a) *Definitions.* The following definitions apply to the terms used in this section.

(1) *Administrative capability* means the ability to maintain all records and accounts that § 21.4209 requires.

(2) *Certifying official* means a representative of an educational institution designated to provide VA with the reports and certifications that §§ 21.4203, 21.4204, 21.5810, 21.5812, 21.7152, and 21.7652 require.

(3) *Main campus* means the location where the primary teaching facilities of an educational institution are located. If an educational institution has only one teaching location, that location is its main campus. If it is unclear which of the educational institution's teaching facilities is primary, the main campus is the location of the primary office of its Chief Executive Officer.

(4) *Branch campus* means a location of an educational institution that—

(i) Is geographically apart from and operationally independent of the main campus of the educational institution;

(ii) Has its own faculty, administration and supervisory organization; and

(iii) Offers courses in education programs leading to a degree, certificate, or other recognized education credential.

(5) *Extension* means a location of an educational institution that is geographically apart from and is operationally dependent on the main campus or a branch campus of the educational institution.

(Authority: 38 U.S.C. 3675, 3676, 3684)

(b) *State approving agency jurisdiction.* (1) The State approving agency for the State where a residence course is being taught has jurisdiction over approval of that course for VA education benefit purposes.

(2) The fact that the location where the educational institution is offering the course may be temporary will not serve to change jurisdictional authority.

(3) The fact that the main campus of the educational institution may be located in another State from that in which the course is being taught will not serve to change jurisdictional authority.

(Authority: 38 U.S.C. 3672)

(c) *Approving a course offered by a branch campus or an extension of an educational institution.* Before approving a course or a program of education offered at a branch campus or an extension of an educational institution, the State approving agency must ensure that—

(1) Except as provided in paragraph (d) of this section, each location where the course or program is offered has administrative capability; and

(2) Except as provided in paragraph (f) of this section, each location where the course or program is offered has a certifying official on site.

(Authority: 38 U.S.C. 3672)

(d) *Exceptions to the requirement that administrative capability exist at each location.* (1) A State approving agency may approve a course or program offered by a branch campus that does not have its own administrative capability if—

(i) The main campus of the educational institution within the same State maintains a centralized recordkeeping system that includes all records and accounts that § 21.4209 requires for each student attending the branch campus without administrative capability. These records may be originals, certified copies, or in an electronically formatted record keeping system; and

(ii) The main campus can identify the records of students at the branch campus for which it maintains centralized records.

(2) The State approving agency may approve a course or program offered by an extension that does not have its own administrative capability if—

(i) The extension and the main campus or branch campus it is dependent on are located within the same State;

(ii) The main campus or branch campus the extension is dependent on has administrative capability for the extension; and

(iii) The State approving agency combines the approval of the course(s) offered by the extension with the approval of the courses offered by the main campus or branch campus the extension is dependent on.

(e) *Combined approval.* The State approving agency may combine the approval of courses offered by an extension of an educational institution with the approval of the main campus or the branch campus that the extension is dependent on, if the extension is within the same State as the campus it is dependent on. Combining the approval of courses offered by an extension, with the approval of courses offered by the main campus or branch campus the extension is dependent on, does not negate the minimum period of operation requirements in § 21.4251 for courses that do not lead to a standard college degree offered by an extension of a proprietary educational institution. The State approving agency will list the

extension and courses approved on the notice of approval sent to the educational institution pursuant to § 21.4258 of this part.

(f) *Exceptions to the requirement that each location where the course or program is offered must have a certifying official on site.* Exceptions to the requirement in paragraph (c) of this section, that each location with an approved course or program of education must have a certifying official on site, will be permitted for—

(1) Extensions of an educational institution when the State approving agency combines the approval of the courses offered by the extension with a branch campus or main campus. (See paragraph (e) of this section.)

(2) Educational institutions with more than one campus within the same State if the main campus—

(i) Maintains a centralized recordkeeping system. (See paragraph (d)(1) of this section.);

(ii) Has administrative capability for the branch campus (or branch campuses) within the same State; and

(iii) Centralizes its certifying official function at the main campus.

(3) Educational institutions with multi-state campuses when an educational institution wants to centralize its certifying official function into one or more locations if:

(i) The educational institution submits all required reports and certifications that §§ 21.4203, 21.4204, 21.5810, 21.5812, 21.7152, and 21.7652 require via electronic submission through VA's Internet-based education certification application;

(ii) The educational institution designates an employee, at each teaching location of the educational institution that does not have a certifying official present, to serve as a point-of-contact for veterans, servicemembers, reservists, or other eligible persons; the certifying official(s); the State approving agency of jurisdiction; and VA. The designated employee must have access (other than to transmit certifications) to VA's Internet-based education certification application to provide certification information to veterans, servicemembers, reservists, or other eligible persons, State approving agency representatives, and VA representatives;

(iii) Each certifying official uses the VA facility code for the location that has administrative capability for the teaching location where the student is training when submitting required reports and certifications to VA; and

(iv) Each certifying official has full access to the administrative records and accounts that § 21.4209 requires for each student attending the teaching location(s) for which the certifying official has been designated responsibility. These records may be originals, certified copies, or in an electronically formatted record keeping system.

(Authority: 38 U.S.C. 3672)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0073)

[FR Doc. E7–7810 Filed 4–24–07; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA–R03–OAR–2007–0254; FRL–8304–8]

State Operating Permit Programs; Maryland; Revisions to the Acid Rain Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland operating permit program. The revisions amend the Code of Maryland Administrative Regulations' (COMAR) incorporation by reference citations to ensure that future changes to the Federal Acid Rain program will continue to be incorporated into Maryland's regulations. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on June 25, 2007 without further notice, unless EPA receives adverse written comment by May 25, 2007. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0254 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: campbell.dave@epa.gov.

C. *Mail:* EPA–R03–OAR–2007–0254, David Campbell, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–0254. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Paul Arnold, (215) 814–2194, or by e-mail at *arnold.paul@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 13, 2007, Maryland submitted a formal revision to its Title V operating permit program. The revisions amend The Code of Maryland Administrative Regulations' (COMAR) incorporation by reference citations to ensure that future changes to the Federal Acid Rain program will continue to be incorporated into Maryland's regulations.

II. Summary of Title V Program Revision

Both COMAR 26.11.02.01 and 26.11.03.01 currently incorporate by reference the Federal Acid Rain Program. These revisions will update COMAR 26.11.02.01 and COMAR 26.11.03.01 to ensure that future changes to the Federal program will continue to be incorporated by reference into Maryland's regulations.

III. Final Action

EPA is approving this revision to the Maryland operating permit program. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on June 25, 2007 without further notice unless EPA receives adverse comment by May 25, 2007. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *June 25, 2007*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approves changes to Maryland's Title V operating permit program and may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: April 17, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Appendix A to part 70 is amended by revising paragraph (c) in the entry for Maryland to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Maryland

* * * * *

(c) The Maryland Department of the Environment submitted an operating permit program amendment on February 13, 2007. The program amendment contained in the February 13, 2007 submittal will update Maryland's existing incorporation by reference citations to the Federal Acid Rain Program. The state is hereby granted approval effective on June 25, 2007.

* * * * *

[FR Doc. E7–7919 Filed 4–24–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 158

[EPA–HQ–OPP–2004–0415; FRL–8113–7]

RIN 2070-AD51

Pesticides; Data Requirements for Biochemical and Microbial Pesticides; Notification to the Secretary of Agriculture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: This document notifies the public that the Administrator of EPA has forwarded to the Secretary of Agriculture a draft final rule as required by section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). As described in the Agency's semi-annual Regulatory Agenda, the draft final rule updates the data requirements necessary to register a biochemical or microbial pesticide product. The revisions will codify data requirements to reflect current regulatory and scientific standards. The data requirements will cover all scientific disciplines for biochemical and microbial pesticides, including product chemistry and residue chemistry, toxicology, and environmental fate and effects.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2004–0415. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Nathanael R. Martin, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460-0001; telephone number: 703-305-6475; e-mail address: *martin.nathanael@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. It simply announces the submission of a draft final rule to the U. S. Department of Agriculture (USDA) and does not otherwise affect any specific entities. This action may, however, be of particular interest to producers or registrants of a biochemical or microbial pesticide product. This action also may affect any person or company who might petition the Agency for new tolerances for biochemical or microbial pesticides, or hold a pesticide registration with existing tolerances, or any person or company who is interested in obtaining or retaining a tolerance in the absence of a registration, that is, an import tolerance for biochemical or microbial pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is EPA Taking?

Section 25(a)(2) of FIFRA requires the Administrator to provide the Secretary of Agriculture with a copy of any final regulation at least 30 days before signing it for publication in the **Federal Register**. The draft final rule is not available to the public until after it has been signed by EPA. If the Secretary comments in writing regarding the draft final rule within 15 days after receiving it, the Administrator shall include the comments of the Secretary, if requested by the Secretary, and the Administrator's response to those comments in the final rule when published in the **Federal Register**. If the Secretary does not comment in writing within 15 days after receiving the draft final rule, the Administrator may sign the final rule for publication in the **Federal Register** anytime after the 15–day period.

III. Do Any Statutory and Executive Order Reviews Apply to this Notification?

No. This document is not a rule, it is merely a notification of submission to the Secretary of Agriculture. As such, none of the regulatory assessment requirements apply to this document.

IV. Will this Notification be Subject to the Congressional Review Act?

No. This action is not a rule for purposes of the Congressional Review Act (CRA), 5 U.S.C. 804(3), and will not be submitted to Congress and the Comptroller General. EPA will submit the final rule to Congress and the Comptroller General as required by the CRA.

List of Subjects in 40 CFR Part 158

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: April 9, 2007.

Anne E. Lindsay,

Acting Director, Office of Pesticide Programs.

[FR Doc. E7–7445 Filed 4–24–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 174 and 180

[EPA–HQ–OPP–2005–0116; FRL–7742–2]

Administrative Revisions to Plant-Incorporated Protectant Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: EPA is taking direct final action to move existing active and inert ingredient plant-incorporated protectant tolerance exemptions from 40 CFR part 180, Tolerances and Exemptions from Tolerances for Pesticide Chemicals in Food to 40 CFR part 174, Procedures and Requirements for Plant-Incorporated Protectants, subpart W. EPA is also making some conforming changes to the text of the individual exemptions being transferred from part 180 so that they are consistent with part 174, as well as some minor technical corrections to the wording of certain individual exemptions. This action is administrative in nature and no substantive changes are made or are intended.

DATES: This Direct Final Rule is effective on July 24, 2007 without further notice, unless EPA receives adverse comment by June 25, 2007. If EPA receives such adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

If this Direct Final Rule becomes effective on July 24, 2007, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. Objections and requests for hearings must be received on or before September 24, 2007.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0116. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Polllution Prevention Division (BPPD) (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; fax number: (703) 308–7026; e-mail address: *mendelson.mike@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http:// www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR parts 174 and 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr.*

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0116 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 24, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2005–0116, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background

In 2001, EPA published a final rule, establishing certain basic parameters of its regulatory program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for a specific class of

pesticide products—plant-incorporated protectants (66 FR 37772, July 19, 2001). EPA defined these products as pesticidal substances, along with the genetic material necessary to produce them, when produced and used in living plants. As part of that rule, EPA changed the name of this type of pesticide from ''plant-pesticide'' to ''plant-incorporated protectant.'' EPA also established a new part in title 40 of the Code of Federal Regulations (CFR) specifically for plant-incorporated protectants (40 CFR part 174). In the same issue of the **Federal Register**, EPA established a blanket tolerance exemption for all residues of nucleic acids that are part of a plant-incorporated protectant (PIP) (66 FR 37817, July 19, 2001). See 40 CFR 174.475.

A. What Action is the Agency Taking?

In this Direct Final Rule, the Agency is making minor technical changes to conform the wording of certain individual tolerance exemptions with the above regulations. The specific technical changes are discussed below.

The Agency is moving some tolerance exemptions listed under 40 CFR part 180 to 40 CFR part 174 in order to consolidate all plant-incorporated protectant-specific regulations in the same part.

The Agency is also making some conforming changes to the wording of the exemptions so that they are consistent with the provisions currently in part 174. These changes consist of revising the term ''plant-pesticides'' in these exemptions to read ''plant-incorporated protectants'' and changing the term ''vegetative insecticidal protein'' to the more broad term ''plant-incorporated protectant.''

Further, for these exemptions, as well as those found in newly redesignated 40 CFR 174.501, 174.502, 174.503, 174.504, 174.505, 174.506, and 174.528 (formerly §§ 174.452, 174.453, 174.454, 174.455, 174.456, 174.457, and 174.458, respectively), EPA is also deleting the references to the phrase ''genetic material necessary for its production'' and the term ''regulatory regions,'' as well as the definitions of these terms, from individual tolerance exemptions. As noted above, EPA established a blanket tolerance exemption for nucleic acids, which includes the residues of genetic material necessary for the production of pesticidal substances in living plants, and residues of the genetic material necessary to produce any inert ingredient (40 CFR 174.475 redesignated as § 174.507). Retaining the references to the phrase ''genetic material necessary for the production of the individual substances,'' and to ''regulatory regions'' in the text of the individual exemptions would be wholly duplicative of redesignated 40 CFR 174.507, and has the potential to cause confusion as to the intended scope of that provision. Accordingly, the Agency is removing these references. These deletions will in no way affect the legal status of such residues, given the provisions at 40 CFR 174.507.

Similarly, inclusion of the definitions of these terms in the individual exemptions becomes unnecessary once the exemptions are moved to part 174, as the terms are defined at § 174.3, which is generally applicable to all regulations contained in part 174. Moreover, the wording of the definitions varies slightly between some of the individual tolerance exemptions. While the Agency does not believe that there is any substantive difference between the different formulations, to avoid any confusion, EPA has chosen to delete the definitions from the individual tolerance exemptions. The deletion of these definitions from the individual tolerance exemptions will in no way affect the legal status of the residues exempted.

Further, for these exemptions and for 40 CFR 174.451, *Scope and Purpose*, redesignated as § 174.500, EPA is changing the terms ''plant raw agricultural commodities,'' ''Raw agricultural commodities,'' ''raw agricultural commodities, in food, and in animal feeds,'' ''plant racs,'' and ''plant commodities'' to read ''food commodities.'' While the Agency does not believe that there is any substantive difference between the different formulations, to avoid any confusion, EPA has chosen to use the one term ''food commodities.'' This change will in no way affect the legal status of the residues exempted.

EPA is changing the term ''delta-endotoxin'' to read ''Cry protein'' and removing any subspecies designations for *Bacillus thuringiensis* PIPs. The terms ''delta-endotoxin'' and ''Cry protein'' are redundant. While the Agency does not believe that there is any substantive difference between these different formulations, to avoid any confusion, EPA has chosen to use the one term ''Cry protein'' without a subspecies designation. This change will in no way affect the legal status of the residues exempted.

EPA is adding the term ''enzyme'' to descriptions of current PIP inert ingredients to clarify the function of these proteins and to make classification easier for the layman. While the Agency does not believe that there is any substantive difference between these and the current naming formulations, to clarify the function of these proteins and make classification easier for the layman, EPA has chosen to add the term ''enzyme.'' This change will in no way affect the legal status of the residues exempted.

EPA is updating *Bacillus thuringiensis* derived plant-incorporated protectant exemptions to conform to updated nomenclature as determined by the Bacillus thuringiensis Pesticidal Crystal Proteins Nomenclature Committee, a non-governmental scientific committee, *http://www.biols.susx.ac.uk/home/NeilCrickmore/Bt/*. EPA is standardizing the tolerance exemption descriptions to list the ''residues of'' portion of the exemption first and to list field corn, sweet corn and popcorn as corn; corn, field; corn, sweet; and corn, pop. These changes will in no way affect the legal status of the residues exempted.

EPA is adding language to the exemption at § 174.513 (redesignated from § 180.1183), Potato Leaf Roll Virus Resistance Gene (also known as orfl/orf2 gene), and the genetic material necessary for its production to clarify that residues in or on all food commodities are covered under this regulation. The phrase ''in or on all raw agricultural commodities'' was inadvertently excluded from the regulatory text of this exemption. However, the preamble to the rule clearly stated the Agency's intention to exempt residues of this product in or on all raw agricultural commodities. See 62 FR 43650, August 15, 1997. In addition, EPA's findings and supporting analyses concerning the safety of these residues addressed residues in or on all raw agricultural commodities. The inclusion of the phrase ''all food commodities'' in the individual tolerance exemption will in no way affect the legal status of the residues covered by the regulation.

Finally, EPA is adding language to the exemption at § 174.523 (redesignated from § 180.1174), CP4 Enolpyruvylshikimate-3-phosphate (GP4 EPSPS), and the genetic material necessary for its production in all plants to clarify that this PIP inert ingredient is a synthase. The word ''synthase'' corresponds to the last ''S'' in ''CP4 EPSPS'' and was inadvertently excluded from the exemption. However, the Notice of Filing (the pesticide petition) clearly stated ''synthase'' in describing the ingredient. See 60 FR 54689, October 25, 1995 (FRL–4982–4). The inclusion of the phrase ''synthase'' in the individual tolerance exemption will in no way affect the legal status of the residues covered by the regulation.

The specific tolerance exemptions that EPA is transferring from part 180, subpart D to part 174, subpart W are identified in the codified portion of this document. In addition to redesignating these sections into part 174, EPA is making non-substantive changes to terminology and for that reason the revised tolerance language that will appear in 40 CFR part 174 appears at the end of this document as regulatory text. While EPA believes that it has accurately transferred each of the tolerance exemptions included in this rule, the Agency would appreciate readers notifying EPA of discrepancies, omissions or technical problems by submitting such comments to the address under **FOR FURTHER INFORMATION CONTACT**.

EPA is publishing this rule without prior proposal because EPA views this as a non-controversial amendment and anticipates no adverse comments since the changes are entirely administrative in nature. As discussed further below, these revisions are being made merely to make the wording of certain tolerance exemptions consistent with the wording adopted in subsequent regulations. No changes have been made that affect in any way the legal status of the residues covered by the existing tolerance exemptions. All of the substantive issues reflected in the revisions to the regulatory text previously were the subject of notice and comments rulemaking; as no substantive changes are contemplated by this regulation, EPA anticipates no adverse comment on this notice. However, in the ''Proposed Rules'' section of this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to these administrative revisions to plant-incorporated protectant tolerance exemptions if adverse comments are filed. This Direct Final Rule will be effective on July 24, 2007 without further notice unless the Agency receives adverse comment by June 25, 2007. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. The Agency will address all public comments in a subsequent final rule based on the proposed rule. The Agency will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

B. What is the Agency's Authority for Taking this Action?

This action is being finalized under sections 408(e)(1)(B) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e)(1)(B).

Section 408(e)(1)(B) provides that the Administrator may issue a regulation modifying an exemption of a pesticide chemical residue from the requirement of a tolerance, 21 U.S.C. 346a(e)(l)(B). Because EPA is making no substantive modifications to the tolerance exemptions, the Agency has not made separate findings regarding the safety of the individual exemptions. EPA believes that the safety standard is applicable only where the Agency takes affirmative action to either substantively modify the tolerance exemption, or has reviewed the tolerance exemption and determined to leave it in effect. EPA is taking neither action in this notice, but is merely making technical modifications to conform the wording of the individual exemptions to wording that is consistent with the surrounding regulations.

III. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to 0MB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is a not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities since this action is administrative in nature and no substantive changes are being made.

IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 174

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements, Plant-incorporated protectants.

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 12, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

■ Therefore, Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a, and 371.

■ 2. In the following table, the sections in the first column are transferred to 40 CFR part 174, subpart W and redesignated as the sections in the second column.

Old Section	Redesignated as New section
180.1134	174.521
180.1147	174.509
180.1151	174.522
180.1155	174.510
180.1173	174.511
180.1174	174.523
180.1182	174.512
180.1183	174.513
180.1184	174.514
180.1185	174.515
180.1186	174.516
180.1190	174.524
180.1192	174.517
180.1214	174.518
180.1215	174.519
180.1216	174.525
180.1217	174.520
180.1249	174.526
180.1252	174.527

§§ 180.1227 and 180.1242 [Removed]

■ 3. Section 180.1227 and 180.1242 are removed.

PART 174—[AMENDED]

■ 4. The authority citation for part 174 continues to read as follows:

Authority: 7 U.S.C. 136 - 136y; 21 U.S.C. 346a and 371.

§ 174.21 [Amended]

■ 5. Section 174.21 is amended as follows:

■ i. In paragraph (b) by revising the reference ''§§ 174.475 through 174.479'' to read ''§§ 174.507 through 174.508.''

■ ii. In paragraph (c) by revising the reference ''§§ 174.485 through 174.490'' to read ''§ 174.705.''

§§ 174.475 and 174.479 [Redesignated as §§ 174.507 and 174.508]

■ 6. Sections 174.475 and 174.479 are redesignated as §§ 174.507 and 174.508, respectively.

§§ 174.480 and 174.485 [Redesignated as §§ 174.700 and 174.705]

■ 7. Sections 174.480 and 174.485 are redesignated as § 174.700 and § 174.705, respectively and remain in subpart X.

■ 8. Sections 174.451, 174.452, 174.453, 174.454, 174.455, 174.456, and 174.457 are redesignated as §§ 174.500, 174.501, 174,502, 174.503, 174.504, 174.505, and 174.506, respectively, and revised to read as follows:

§ 174.500 Scope and purpose.

This subpart lists the tolerances and exemptions from the requirement of a tolerance for residues of plant-incorporated protectants in or on food commodities.

§ 174.501 Bacillus thuringiensis VIP3A protein; temporary exemption from the requirement of a tolerance.

Residue of *Bacillus thuringiensis* VIP3A protein are temporarily exempt from the requirement of a tolerance when used as a plant-incorporated protectant in cotton seed, cotton oil, cotton meal, cotton hay, cotton hulls, cotton forage, and cotton gin byproducts. This temporary exemption from the requirement of a tolerance expires May 1, 2007.

§ 174.502 Bacillus thuringiensis Cry1A.105 protein in corn; temporary exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry1A.105 protein in corn are exempt from the requirement of a tolerance when used as plant-incorporated protectant in the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop. This temporary exemption from the requirement of a tolerance will permit the use of the food commodities in this paragraph when treated in accordance with the provisions of the experimental use permit 524–EUP–97 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136). This temporary exemption from the requirement of a tolerance expires and is revoked June 30, 2009; however, if the experimental use permit is revoked, or if any experience with or scientific data on this pesticide indicate that the tolerance is not safe, this temporary exemption from the requirement of a tolerance may be revoked at any time.

§ 174.503 Bacillus thuringiensis Cry2Ab2 protein in corn; temporary exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry2Ab2 protein in corn are exempt from the requirement of a tolerance when used as plant-incorporated protectant in the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop. This temporary exemption from the requirement of a tolerance will permit the use of the food commodities in this paragraph when treated in accordance with the provisions of the experimental use permit 524–EUP–97 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136). This temporary exemption from the requirement of a tolerance expires and is revoked June 30, 2009; however, if the experimental use permit is revoked, or if any experience with or scientific data on this pesticide indicate that the tolerance is not safe, this temporary exemption from the requirement of a tolerance may be revoked at any time.

§ 174.504 Bacillus thuringiensis Cry1F protein in cotton; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry1F protein in cotton are exempt from the requirement of a tolerance when used as a plant-incorporated protectant in food and feed commodities of cotton.

§ 174.505 Bacillus thuringiensis modified Cry3A protein (mCry3A) in corn; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* modified Cry3A protein (mCry3A) in corn are exempt from the requirement of a tolerance when used as plant-incorporated protectant in the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop.

§ 174.506 Bacillus thuringiensis Cry34Ab1 and Cry35Ab1 proteins in corn; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins in corn are exempted from the requirement of a tolerance when used as plant-incorporated protectants in the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop.

■ 9. Newly redesignated §§ 174.509 through 174.527 are revised to read as follows:

§ 174.509 Bacillus thuringiensis Cry3A protein; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry3A protein are exempted from the requirement of a tolerance when used as a plant-incorporated protectant in potatoes.

§ 174.510 Bacillus thuringiensis Cry1Ac protein in all plants; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry1Ac protein in all plants are exempt from the requirement of a tolerance when used as plant-incorporated protectants in all food commodities.

§ 174.511 Bacillus thuringiensis Cry1Ab protein in all plants; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry1Ab protein in all plants are exempt from the requirement of a tolerance when used as plant-incorporated protectants in all food commodities.

§ 174.512 Coat Protein of Potato Virus Y; exemption from the requirement of a tolerance.

Residues of Coat Protein of Potato Virus Y are exempt from the requirement of a tolerance when used as a plant-incorporated protectant in or on all food commodities.

§ 174.513 Potato Leaf Roll Virus Resistance Gene (also known as orf1/orf2 gene); exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the plant-incorporated protectant Potato Leaf Roll Virus Resistance Gene (also known as orf1/orf2 gene) in or on all food commodities.

§ 174.514 Coat Protein of Watermelon Mosaic Virus-2 and Zucchini Yellow Mosaic Virus; exemption from the requirement for a tolerance.

Residues of Coat Protein of Watermelon Mosaic Virus-2 and Zucchini Yellow Mosaic Virus are exempt from the requirement of a tolerance when used as a plant-incorporated protectant in or on all food commodities.

§ 174.515 Coat Protein of Papaya Ringspot Virus; exemption from the requirement of a tolerance.

Residues of Coat Protein of Papaya Ringspot Virus are exempt from the requirement of a tolerance when used as a plant-incorporated protectant in or on all food commodities.

§ 174.516 Coat protein of cucumber mosaic virus; exemption from the requirement of a tolerance.

Residues of Coat Protein of Cucumber Mosaic Virus are exempt from the requirement of a tolerance when used as a plant-incorporated protectant in or on all food commodities.

§ 174.517 Bacillus thuringiensis Cry9C protein in corn; exemption from the requirement of a tolerance.

The plant-incorporated protectant *Bacillus thuringiensis* Cry9C protein in corn is exempted from the requirement of a tolerance for residues, only in corn used for feed; as well as in meat, poultry, milk, or eggs resulting from animals fed such feed.

§ 174.518 Bacillus thuringiensis Cry3Bb1 protein in corn; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry3Bb1 protein in corn are exempt from the requirement of a tolerance when used as plant-incorporated protectants in the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop.

§ 174.519 Bacillus thuringiensis Cry2Ab2 protein in cotton; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry2Ab2 protein in cotton is exempt from the requirement of a tolerance when used as a plant-incorporated protectant in the food and feed commodities, cotton seed, cotton oil, cotton meal, cotton hay, cotton hulls, cotton forage, and cotton gin byproducts.

§ 174.520 Bacillus thuringiensis Cry1F protein in corn; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry1F protein in corn are exempt from the requirement of a tolerance when used as plant-incorporated protectants in the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop.

§ 174.521 Neomycin phosphotransferase II; exemption from the requirement of a tolerance.

Residues of the neomycin phosphotransferase II (NPTII) enzyme are exempted from the requirement of a tolerance in all food commodities when used as a plant-incorporated protectant inert ingredient.

§ 174.522 Phosphinothricin Acetyltransferase (PAT); exemption from the requirement of a tolerance.

Residues of the Phosphinothricin Acetyltransferase (PAT) enzyme are exempt from the requirement of a tolerance when used as plant-incorporated protectant inert ingredients in all food commodities.

§ 174.523 CP4 Enolpyruvylshikimate-3-phosphate (CP4 EPSPS) synthase in all plants; exemption from the requirement of a tolerance.

Residues of the CP4 Enolpyruvylshikimate-3-phosphate (CP4 EPSPS) synthase enzyme in all plants are exempt from the requirement of a tolerance when used as plant-incorporated protectant inert ingredients in all food commodities.

§ 174.524 Glyphosate Oxidoreductase GOX or GOXv247 in all plants; exemption from the requirement of a tolerance.

Residues of the Glyphosate Oxidoreductase GOX or GOXv247 enzyme in all plants are exempt from the requirement of a tolerance when used as plant-incorporated protectant inert ingredients in all food commodities.

§ 174.525 E. coli B-D-glucuronidase enzyme as a plant-incorporated protectant inert ingredient; exemption from the requirement of a tolerance.

Residues of *E. coli* B-D-glucuronidase enzyme are exempt from the requirement of a tolerance when used as a plant-incorporated protectant inert ingredient in all food commodities.

§ 174.526 Hygromycin B phosphotransferase (APH4) marker protein in all plants; exemption from the requirement of a tolerance.

Residues of the Hygromycin B phosphotransferase (APH4) enzyme in all plants are exempt from the requirement of a tolerance when used as a plant-incorporated protectant inert ingredient in cotton.

§ 174.527 Phosphomannose isomerase in all plants; exemption from the requirement of a tolerance.

Residues of the phosphomannose isomerase (PMI) enzyme in plants are exempt from the requirement of a tolerance when used as plant-incorporated protectant inert ingredients in all food commodities.

■ 10. Section 174.458 is redesignated as 174.528 and revised to read as follows:

§ 174.528 Bacillus thuringiensis Vip3Aa20 protein; temporary exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Vip3Aa20 protein in corn are temporarily exempt from the requirement of a tolerance when used as a plant-incorporated protectant in the food and feed commodities of corn; corn, field; corn, sweet; corn, pop. This temporary exemption from the

requirement of tolerance will permit the use of the food commodities in this paragraph when treated in accordance with the provisions of the experimental use permit 67979–EUP–6, which is being issued in accordance with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136). This temporary exemption from the requirement of a tolerance expires and is revoked March 31, 2008; however, if the experimental use permit is revoked, or if any experience with or scientific data on this pesticide indicate that the temporary tolerance exemption is not safe, this temporary exemption from the requirement of a tolerance may be revoked at any time.

[FR Doc. E7–7768 Filed 4–24–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0224; FRL–8121–2]

Propiconazole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of propiconazole and its metabolites containing the dichlorobenzoic acid (DCBA) moiety expressed as parent compound, in or on peach and nectarine. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on peach and nectarine as a post-harvest treatment. This regulation establishes maximum permissible levels for residues of propiconazole in these food commodities. The tolerances expire and are revoked on December 31, 2010.

DATES: This regulation is effective April 25, 2007. Objections and requests for hearings must be received on or before June 25, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0224. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Andrea Conrath, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9356; e-mail address: *conrath.andrea@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0224 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 25, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2007–0224, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday,

excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for combined residues of the fungicide propiconazole, and its metabolites containing the dichlorobenzoic acid (2,4-DCBA) moiety expressed as parent compound, in or on peach and nectarine at 2.0 parts per million (ppm). These tolerances expire and are revoked on December 31, 2010. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR).

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Propiconazole as a Post-Harvest Treatment on Peach and Nectarine and FFDCA Tolerances

The applicant states that market demands have required producers to change storage practices for peaches and nectarines, and allow a pre-ripening time of 48 hours at 68°F to enhance fruit quality, prior to placing the fruit in cold storage at 32°F. This extra step has inadvertently fostered increased incidence of sour rot which has caused significant losses to growers. The current storage conditions used were developed to improve fruit quality and satisfy customer demands; returning to previous storage conditions would not result in acceptable fruit quality for the industry or consumer. Without the ability to adequately manage sour rot, economic data provided indicates that significant economic losses will occur. EPA has authorized under FIFRA section 18 the use of propiconazole on peach and nectarine as a post-harvest treatment, for control of sour rot in California. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of propiconazole in or on peach and nectarine. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although these tolerances expire and are revoked on December 31, 2010, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on peach and nectarine after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether propiconazole meets EPA's registration requirements for use on peach and nectarine as a post-harvest treatment or whether permanent tolerance for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as bases for registration of propiconazole by a State for special local needs under section 24(c) of FIFRA. Nor do these tolerances serve as the basis for any State other than California to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for propiconazole, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

Consistent with section 408(b)(2)(D) of the FFDCA , EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of propiconazole and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for time-limited tolerances for combined residues or residues of propiconazole in or on peach and nectarine at 2.0 ppm. While this post-harvest use under section 18 is not expected to result in residues exceeding 1.0 ppm, there is a pre-harvest use registered for use on stone fruit (includes peach and nectarine) for which a permanent tolerance is

established at 1.0 ppm. Therefore, EPA does not expect total residues from both of these uses to exceed 2.0 ppm in or on peach and nectarine.

On September 22, 2006 the Agency published a Final Rule (71 FR 55300, FRL–8092–1) establishing tolerances for combined residues of propiconazole and its metabolites containing the dichlorobenzoic acid (2,4-DCBA) moiety expressed as parent compound, in or on various commodities; and inadvertent residues in or on alfalfa, forage, and alfalfa, hay. When the Agency conducted the risk assessments in support of these tolerance actions it assumed that propiconazole residues would be present on peach and nectarine at 2.0 ppm, in association with this section 18 post-harvest use and the already registered pre-harvest use (for which there is a permanent tolerance established at 1.0 ppm), as well as on all foods covered by the proposed and established tolerances. Residues on peach and nectarine were included because there was a pending emergency exemption application under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.*, for emergency post-harvest use on these commodities. Therefore, establishing the peach and nectarine tolerances will not change the most recent estimated aggregate risks resulting from use of propiconazole, as discussed in the September 22, 2006 **Federal Register**. Refer to the September 22, 2006 **Federal Register** document, and its associated docket EPA-HQ-OPP-2006-0347, for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action.

Based on the risk assessments discussed in the final rule published in the **Federal Register** of September 22, 2006, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to propiconazole residues. The September 22, 2006 final rule contains a docket that has a risk assessment that describes the exposure and safety findings in detail.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (a gas chromatography (GC) method using electron capture detection (Method AG-454) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

The Codex Alimentarious Commission has established a maximum residue limit (MRL) for propiconazole in/on stone fruit, which includes peach and nectarine, at 1.0 ppm, expressed in terms of propiconazole *per se*. In addition, Canada has established MRLs on peach and nectarine of 1.0 ppm, expressed as propiconazole and its metabolites including the 2,4-DCBA moiety. As discussed above, there is a permanent U.S. tolerance set at 1.0 ppm for the stone fruit crop group, in association with a registered pre-harvest use. Therefore, to the extent possible, the U.S. tolerances are numerically harmonized with Codex and Canada. However, this section 18 emergency use represents a difference in the use pattern and the supporting residue data indicates a tolerance of 2.0 ppm will be necessary to cover total residues which may occur as a result of both the registered pre-harvest use, as well as this section 18 post-harvest use. A summary of Codex MRLs, Canadian MRLs, and Mexican tolerances and the corresponding U.S. tolerances for propiconazole is discussed at *http://www.regulations.gov* Docket No. EPA–HQ–OPP–2006–0347-0004; pages 53-54.

VI. Conclusion

Therefore, the tolerances are established for combined residues of propiconazole, and its metabolites containing the dichlorobenzoic acid (DCBA) moiety expressed as parent compound in or on peach and nectarine at 2.0 ppm.

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of

Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 12, 2007.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.434 is amended by adding text and table to paragraph (b) to read as follows:

§180.434 Propiconazole; tolerances for residue.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of propiconazole (1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl] methyl]-1H-1,2,4-triazole) and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table:

Commodity	Parts per million	Expiration/revocation date
Nectarine	2.0	12/31/2010
Peach	2.0	12/31/2010

* * * * *

[FR Doc. E7–7678 Filed 4–24–07; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[WT Docket No. 04–435; FCC 07–47]

Amendment of the Commission's Rules To Facilitate the Use of Cellular Telephones and Other Wireless Devices Aboard Airborne Aircraft

AGENCY: Federal Communications Commission.

ACTION: Final rule, termination of proceeding.

SUMMARY: This document provides notice of the termination of the proceeding in WT Docket No. 04–435, involving the Commission's ban on the airborne use of cellular telephones as set out in the Commission's prohibition on airborne operation of cellular telephones rules.

DATES: Effective April 3, 2007.

FOR FURTHER INFORMATION CONTACT: Linda Chang, Mobility Division, Wireless Telecommunications Bureau, 202–418–1339, *Linda.Chang@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, released April 3, 2007. The complete text of the *Memorandum Opinion and Order* is available for inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The complete text may also be downloaded at: *http://www.fcc.gov.*

Synopsis of Memorandum Opinion and Order:

1. On December 15, 2004, the Commission adopted a *Notice of Proposed Rulemaking* (*NPRM*) at 70 FR 11916, March 10, 2005 in the above-captioned docket proposing to replace or relax its ban under § 22.925 of the Commission's rules on the use of 800 MHz cellular handsets on airborne aircraft. The *NPRM* explored several different options for allowing airborne use of wireless devices, including a proposal to remove the current ban on the airborne use of cellular phones. Given the lack of technical information in the record upon which the Commission may base a decision, it has determined at this time that this proceeding should be terminated.

2. In the *NPRM*, the Commission specifically requested technical comment, emphasizing that the ban on the airborne use of cell phones would not be removed without sufficient information regarding possible technical solutions. The *NPRM* also noted that the Federal Aviation Administration (FAA) prohibits the use of portable electronic devices (PEDs) on airborne aircraft, and that RTCA, Inc. (RTCA), a Federal Advisory Committee, is currently studying the effect of PEDs on aircraft navigation and safety at the request of the FAA. RTCA published findings in December 2006, and is expected to issue recommendations regarding airplane design and certification requirements in 2007.

3. The comments filed in this proceeding provide insufficient technical information that would allow the Commission to assess whether the airborne use of cellular phones may occur without causing harmful interference to terrestrial networks. Similarly, the December 2006 RTCA report does not provide data that would allow the Commission to evaluate the potential for interference between PED operations onboard airplanes and terrestrial-based wireless systems. Further, because it appears that airlines, manufacturers, and wireless providers are still researching the use of cell phones and other PEDs onboard aircraft, the Commission does not believe that seeking further comment at this juncture will provide the necessary technical information in the near term. Accordingly, the Commission concludes that this proceeding should be terminated. The Commission may, however, reconsider this issue in the future if appropriate technical data is available for its review.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–7791 Filed 4–24–07; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 72, No. 79
Wednesday, April 25, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 535

RIN 3206–AK87

Critical Position Pay Authority

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is proposing new regulations to govern the use of a critical position pay authority that allows higher rates of pay for positions that require a very high level of expertise in a scientific, technical, professional, or administrative field and are critical to the agency's mission. By law, agency requests for critical position pay authority must be approved by OPM in consultation with the Office of Management and Budget.

DATES: Submit comments on or before June 25, 2007.

ADDRESSES: Send or deliver written comments to Charles D. Grimes III, Deputy Associate Director for Performance Management and Pay Systems Design, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200; FAX: (202) 606–4264; or e-mail: *pay-performance-policy@opm.gov*.

FOR FURTHER INFORMATION CONTACT: Joe Ratcliffe, (202) 606–2838; FAX: (202) 606–4264; or e-mail: *pay-performance-policy@opm.gov*.

SUPPLEMENTARY INFORMATION: Section 5377 of title 5, United States Code, as revised by section 102 of the Federal Workforce Flexibility Act of 2004 (Public Law 108–411, October 30, 2004), authorizes the Office of Personnel Management (OPM), in consultation with the Office of Management and Budget (OMB), to grant authority to an agency to fix the rate of basic pay for one or more positions that are designated as critical positions.

Section 102 shifts responsibility for the critical position pay authority from OMB to OPM to encourage increased application of this underutilized flexibility as a means of attracting talented individuals to critical positions in the Federal Government who would not otherwise accept or stay in Government jobs at lower rates of pay. As the agency charged with assisting the executive branch to meet its growing human capital demands, OPM currently works directly with other agencies to ensure that they use the broad range of existing human resources management tools strategically to recruit, retain, and manage a high-performing workforce.

Under the critical position pay authority, OPM may, upon the request of the head of an agency, grant critical position pay authority for positions that require a very high level of expertise in a scientific, technical, professional, or administrative field and are critical to the accomplishment of the agency's mission. Critical position pay authority may be granted only to the extent necessary to recruit or retain an individual exceptionally well-qualified for a critical position.

Approval of critical position pay authority for a position does not change conditions of employment other than the rate of basic pay. For example, employees who receive critical position pay still remain under their normal pay plan, may still receive applicable performance awards; cash awards; recruitment, retention, and relocation incentives; and other similar payments; and remain subject to the applicable aggregate limitation on pay. However, employees receiving critical position pay may not receive locality pay under 5 U.S.C. 5304 or similar authority. Agencies with employees under the critical position pay authority must use the pay rate determinant code ''C'' for covered employees in submissions to the Central Personnel Data File.

Guidance on submitting requests for critical position pay authority was published in OMB Bulletin No. 91–09, March 7, 1991. These proposed regulations would generally continue the policies and procedures established by OMB, but critical position pay would not be limited to positions classified above GS–15. A general summary of the proposed regulations is as follows:

- The head of an agency would request critical position pay authority by sending a written request and supporting documentation to the Director of OPM. Requests would be prepared in accordance with § 535.104.
- Heads of agencies with approved critical position pay authority would be authorized to set the rate of basic pay for a critical position up to the rate for level II of the Executive Schedule ($168,000 in 2007) without further approval.
- In exceptional circumstances, the head of an agency could seek approval for critical position pay authority up to the rate for level I of the Executive Schedule ($186,600 in 2007), based on information and data that justify the higher rate of pay.
- In rare circumstances, the head of an agency could seek approval for critical position pay authority at a rate higher than the rate for level I of the Executive Schedule with approval by the President based on information and data that justify the higher rate of pay.
- After establishing a critical position pay rate, the head of an agency would have authority to make subsequent pay adjustments, up to the authorized maximum rate of pay. However, the employee must have at least a rating of Fully Successful or equivalent, and subsequent adjustments must be based on labor market factors, recruitment and retention needs, and individual accomplishments and contributions to an agency's mission.
- A critical position pay rate would be a rate of basic pay for most purposes.
- Critical position pay authority could be granted to one or more specific positions at an agency.
- The law requires that OPM submit an annual report to Congress on the use of the critical position pay authority. To produce this report, agencies using the critical position pay authority would submit to OPM by January 31 of each year the information described in § 535.107. The agency would be required to report with respect to each covered position whether the critical position pay authority is still needed.
- Agencies granted critical position pay authority could continue to use the authority as long as it is needed. OPM would monitor agencies' use of critical position pay authorities through annual reports and could terminate the authority associated with any given position if, in OPM's judgment in consultation with OMB, the authority is no longer needed.

Executive Order 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 535

Government employees, Wages.

Office of Personnel Management.

Linda M. Springer,

Director.

Accordingly, OPM is proposing to amend title 5, Code of Federal Regulations, by adding a new part 535 as follows:

PART 535—CRITICAL POSITION PAY AUTHORITY

Sec.

Authority: 5 U.S.C. 5377; E.O. 13415, 71 FR 70641.

§ 535.101 Purpose.

The purpose of this part is to provide a regulatory framework for the critical position pay authority authorized by 5 U.S.C. 5377. The Office of Personnel Management (OPM), in consultation with the Office of Management and Budget (OMB), may grant authority to the head of an agency to fix the rate of basic pay for one or more positions under this part.

§ 535.102 Definitions.

(a) *Agency* has the meaning given that term in 5 U.S.C. 5102.

(b) Employee means an employee (as defined in 5 U.S.C. 2105) in or under an agency.

(c) *Head of an agency* means the agency head or an official who has been delegated the authority to act for the agency head in the matter concerned.

(d) *Critical position* means a position for which OPM has granted authority to the head of an agency to exercise the pay-setting authority provided in 5 U.S.C. 5377.

(e) *Critical position pay authority* means the authority that may be granted to the head of an agency by OPM under 5 U.S.C. 5377 to set the rate of basic pay for a given critical position under the provisions of that section.

(f) *Critical position pay rate* means the specific rate of pay established by the head of an agency for an employee in a critical position based upon the exercise of the critical position pay authority. A critical position pay rate is a rate of basic pay to the extent provided in § 535.106.

§ 535.103 Authority.

(a) Subject to a grant of authority from OPM in consultation with OMB and all other requirements in this part, the head of an agency may fix the rate of basic pay for a critical position at a rate not less than the rate of basic pay that would otherwise be payable for the position, but not greater than—

(1) The rate payable for level II of the Executive Schedule (unless paragraph (a)(2) or (a)(3) applies);

(2) The rate payable for level I of the Executive Schedule in exceptional circumstances based on information and data that justify a rate higher than the rate payable for level II of the Executive Schedule; or

(3) A rate in excess of the rate for level I of the Executive Schedule that is established in rare circumstances with the written approval of the President.

(b) The head of an agency may exercise his or her critical position pay authority only—

(1) When such a position requires expertise of an extremely high level in a scientific, technical, professional, or administrative field and is critical to the agency's successful accomplishment of an important mission; and

(2) To the extent necessary to recruit or retain an individual exceptionally well-qualified for the critical position.

(c) If critical position pay authority is granted for a position, the head of an agency may determine whether it is appropriate to exercise the authority with respect to any proposed appointee or incumbent of the position.

(d) An agency granted critical position pay authority may continue to use the authority for an authorized position as long as needed. OPM will monitor the use of critical position pay authorities annually, through the agency's required reports under § 535.107, and will terminate the authority associated with a given position after notifying the agency if, in OPM's judgment in consultation with OMB, the authority is no longer needed.

§ 535.104 Requests for and granting critical position pay authority.

(a) An agency may request critical position pay authority only after determining that the position in question cannot be filled with an exceptionally well-qualified individual through the use of other available human resources flexibilities and pay authorities. Agency requests must include the information in paragraph (d) of this subsection. OPM, in consultation with OMB, will review agency requests. OPM will advise the requesting agency as to whether the request is approved and when the agency's critical position pay authority becomes effective.

(b) A request for critical position pay authority (or authorities) must be signed by the head of an agency and submitted to OPM. Requests covering multiple positions must include a list of the positions in priority order. The head of an agency may request coverage of positions of a type not listed in 5 U.S.C. 5377(a)(2), as authorized by 5 U.S.C. 5377(i)(2) and Executive Order 13415.

(c) Requests for critical position pay authority to set pay above the rate for level II of the Executive Schedule and up to the rate for level I of the Executive Schedule because of exceptional circumstances require information and data that justify the higher pay. Requests for critical position pay authority to set pay above the rate for level I of the Executive Schedule due to rare circumstances require approval by the President. The head of an agency must submit such requests to OPM with the information required in paragraph (d) of this section. If OPM, in consultation with OMB, concurs with a request to set pay above the rate for level I of the Executive Schedule, OPM will seek the President's approval.

(d) At a minimum, all requests for critical position pay authority must include:

(1) Position title;

(2) Position appointment authority (for Senior Executive Service positions, appointment authority for any incumbent);

(3) Pay plan and grade/level;

(4) Occupational series of the position;

(5) Geographic location of the position;

(6) Current salary of the position or incumbent;

(7) Name of incumbent (or ''Vacant'');

(8) Length of time the incumbent has been in the position or length of time the position has been vacant;

(9) A written evaluation of the need to designate the position as critical. Such an evaluation must include—

(i) The kinds of work required by the position and the context within which it operates;

(ii) The range of positions and qualification requirements that

characterize the occupational field, including those that require extremely high levels of expertise;

(iii) The rates of pay reasonably and generally required in the public and private sectors for similar positions; and

(iv) The availability of individuals who possess the qualifications to do the work required by the position;

(10) Documentation, with appropriate supporting data, of the agency's experience and, as appropriate, the experience of other organizations, in efforts to recruit or retain exceptionally well-qualified individuals for the position or for a position sufficiently similar with respect to the occupational field, required qualifications, and other pertinent factors, to provide a reliable comparison;

(11) Assessment of why the agency could not, through diligent and comprehensive recruitment efforts and without using the critical position pay authority, fill the position within a reasonable period with an individual who could perform the duties and responsibilities in a manner sufficient to fulfill the agency's mission. This assessment must include a justification as to why the agency could not, as an effective alternative, use other human resources flexibilities and pay authorities, such as recruitment, retention, and relocation incentives under 5 CFR part 575;

(12) An explanation regarding why the position should be designated a critical position and made eligible for a higher rate of pay under this part within its organizational context (*i.e.*, relative to other positions in the organization) and, when applicable, how it compares with other critical positions in the agency. The agency must include an explanation of how it will deal with perceived inequities among agency employees (*e.g.*, situations in which employees in positions designated as critical would receive higher rates of pay than their peers, supervisors, or other employees in positions with higher-level duties and responsibilities);

(13) Documentation of the effect on the successful accomplishment of important agency missions if the position is not designated as a critical position;

(14) Any additional information the agency may deem appropriate to demonstrate that higher pay is needed to recruit or retain an employee for a critical position;

(15) Unless the position is an Executive Schedule position, a copy of the position description and qualification standard for the critical position; and

(16) The desired rate of basic pay for requests to set pay above the rate for level II of the Executive Schedule and justification to show that such a rate is necessary to recruit and retain an individual exceptionally well-qualified for the critical position.

§ 535.105 Setting and adjusting rates of basic pay.

(a) The rate of basic pay for a critical position may not be less than the rate of basic pay, including any locality-based comparability payments established under 5 U.S.C. 5304 (or similar geographic adjustment or supplement under other legal authority) that would otherwise be payable for the position.

(b) If critical position pay authority is granted for a position, the head of an agency may set pay initially at any amount up to the rate of pay for level II or level I of the Executive Schedule, as applicable, without further approval unless a higher maximum rate is approved by the President under § 535.104(c).

(c) The head of an agency may make subsequent adjustments in the rate of pay for a critical position each January at the same time general pay adjustments are authorized for Executive Schedule employees under section 5318 of title 5, United States Code. Such adjustments may not exceed the new rate for Executive Schedule level II or other applicable maximum established for the critical position. However, the employee must have at least a rating of Fully Successful or equivalent, and subsequent adjustments must be based on labor market factors, recruitment and retention needs, and individual accomplishments and contributions to an agency's mission.

(d) Employees receiving critical position pay are not entitled to locality-based comparability payments established under 5 U.S.C. 5304 or similar geographic adjustments or supplements under other provision of law.

(e) If an agency discontinues critical position pay for a given position (on its own initiative or because OPM, in consultation with OMB, terminates the authority under § 535.103(d)), the employee's rate of basic pay will be set at the rate to which the employee would be entitled had he or she not received critical pay, as determined by the head of the agency.

§ 535.106 Treatment as rate of basic pay.

A critical position pay rate is considered a rate of basic pay for all purposes except—

(a) Application of any saved pay or pay retention provisions (*e.g.*, 5 U.S.C. 5363); or

(b) Application of any adverse action provisions (*e.g.*, 5 U.S.C. 7512).

§ 535.107 Annual reporting requirements.

(a) OPM must submit an annual report to Congress on the use of the critical position pay authority. Agencies must submit the following information to OPM by January 31 of each year on their use of critical position pay authority for the previous calendar year:

(1) The name, title, pay plan, and grade/level of each employee receiving a higher rate of basic pay under this subpart;

(2) The annual rate or rates of basic pay paid in the preceding calendar year to each employee in a critical position;

(3) The beginning and ending dates of such rate(s) of basic pay, as applicable;

(4) The rate or rates of basic pay that would have been paid but for the grant of critical position pay. This includes what the rate or rates of basic pay were, or would have been, without critical position pay at the time critical position pay is initially exercised and any subsequent adjustments to basic pay that would have been made if critical position pay authority had not been exercised (estimate rates where a range would apply, such as for Senior Executive Service positions); and

(5) Whether the authority is still needed for the critical position(s).

(b) [Reserved]

[FR Doc. E7–7763 Filed 4–24–07; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 204, 214, and 299

[CIS No. 2302–05; DHS Docket No. USCIS–2005–0030]

RIN 1615–AA16

Special Immigrant and Nonimmigrant Religious Workers

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend U.S. Citizenship and Immigration Services (USCIS) regulations regarding the special immigrant and nonimmigrant religious worker visa classifications. This rule addresses concerns about the integrity of the religious worker program by proposing a petition requirement for religious organizations seeking to classify an

alien as an immigrant or nonimmigrant religious worker. This rule also addresses an on-site inspection for religious organizations to ensure the legitimacy of petitioner organizations and employment offers made by such organizations.

This rule also would clarify several substantive and procedural issues that have arisen since the religious worker category was created. This notice proposes new definitions that describe more clearly the regulatory requirements, and the proposed rule would add specific evidentiary requirements for petitioning employers and prospective religious workers.

Finally, this rule also proposes to amend how USCIS regulations reference the sunset date, the statutory deadline by which special immigrant religious workers, other than ministers, must immigrate or adjust status to permanent residence, so that regular updates to the regulations are not required each time Congress extends the sunset date.

DATES: Written comments must be submitted on or before June 25, 2007.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2005–0030, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS–2005–0030 on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. Contact Telephone Number (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Irene Hoffman Moffatt, Senior Program Analyst, Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone (202) 272–8410.

SUPPLEMENTARY INFORMATION:

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I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. The Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) also invite comments that relate to the economic or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to USCIS in evaluating these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See **ADDRESSES** above for information on how to submit comments.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS–2005–0030. All comments received will be posted without change to *http://www.epa.gov/feddocket*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket.* Submitted comments may also be inspected at the Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. To make an appointment please contact the Regulatory Management Division at (202) 272–8377.

II. Background

A. Current Eligibility Requirements for Special Immigrant and Nonimmigrant Religious Workers

Aliens may be classified either as nonimmigrant or special immigrant religious workers under the Immigration and Naturalization Act (INA) and USCIS regulations. *See* sections 101(a)(15)(R) and (27)(C) of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101(a)(15)(R) and (27)(C); 8 CFR 204.5(m), 214.2(r). To be eligible for classification as a religious worker, the alien must have been a member of a religious denomination having a bona fide, nonprofit religious organization in the United States for at least two years prior to the application for admission to the United States if seeking the religious worker (R–1) nonimmigrant status, or to the filing of the petition with USCIS if seeking special immigrant status. The alien must seek to enter the United States to work for the organization, or a bona fide organization affiliated with the denomination, as a minister or a worker in a religious vocation or occupation, regardless of whether or not in a professional capacity. Unlike some nonimmigrant categories, the R classification does not require that the alien establish that he or she has a residence in a foreign country which he or she has no intention of abandoning.

Under current USCIS regulations, ''professional capacity'' is defined as ''an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.'' 8 CFR 214.2(r)(2). ''Religious occupation'' is defined as ''an activity which relates to a traditional religious function,'' including, but not limited to, religious instructors, cantors and workers in religious health care facilities. *Id.* The term generally would not include maintenance workers, clerical staff or fund raisers. *Id.* A ''religious vocation'' is a ''calling to religious life evidenced by the demonstration of commitment practices in the religious denomination, such as the taking of vows.'' *Id.* A bachelor's degree or foreign equivalent is only required for aliens working in a professional capacity, assuming the other vocation or occupation requirements are met.

The main substantive difference between the special immigrant religious worker and the nonimmigrant religious worker classification is that the special immigrant religious worker must not only have been a member of the

religious denomination for the two years immediately preceding the application, but must have also been working as a minister or performing the religious vocation or occupation continuously, either abroad or in the United States or both, for at least two years immediately preceding the filing of the application.

The spouse or child of a nonimmigrant granted R–1 status can be admitted to the United States as an R–2 nonimmigrant in order to accompany, or follow to join, the principal R–1 alien. The spouse or child of a special immigrant religious worker is eligible to apply for permanent residence by virtue of the worker's acquisition of permanent residence.

There is a significant procedural difference between the filing processes for special immigrant religious workers and nonimmigrant religious workers. Section 203(e) of the INA, 8 U.S.C. 1153(e), requires that an alien seeking status as a special immigrant religious worker file a petition (Form I–360) with USCIS. The petition must be approved before the alien can obtain special immigrant status. Under current USCIS regulations, there is no requirement that a nonimmigrant living outside of the United States file a petition to obtain a R–1 visa. At present, an R–1 classification can be initiated at a consular office overseas through application for an R–1 visa (without any prior approval of a petition by USCIS) or, for aliens who are visa-exempt, by seeking initial admission into the United States. Organizations seeking to employ a nonimmigrant religious worker already present in the United States, or to extend the stay of a current R–1 nonimmigrant employee in the United States, must file a Form I–129, Petition for a Nonimmigrant Worker, with USCIS, along with the appropriate fee. Filing a Form I–129 with USCIS is not the only way that a religious worker may obtain further periods of lawful stay in the United States. A religious worker may obtain additional approved periods of lawful stay in the United States by using a visa to reenter or, if visa-exempt, by seeking reentry at the border.

Unlike the provision for ministers, which does not contain a sunset provision, section 101(a)(27)(C)(ii)(II) and (III) of the Act, 8 U.S.C. 1101(a)(27)(C)(ii)(II) and (III), as enacted by section 151(a) of the Immigration Act of 1990 (IMMACT '90), Pub. L. No. 101–649, 104 Stat. 4978 (Nov. 29, 1990), provided that professional and other religious workers must ''seek to enter the United States * * * before October 1, 1994.'' *See also* An Act to Amend the Immigration and Nationality Act to Extend for an Additional 5 years the Special Immigrant Religious Worker Program, Pub. L. No. 108–99, 117 Stat. 1176 (Oct. 15, 2003). This sunset provision has been extended four times and now expires on October 1, 2008. Based on the pattern since 1990, further extensions to the sunset date can be anticipated. To immigrate under the special immigrant religious worker category, aliens who are not ministers must have a petition approved on their behalf and either enter the United States as an immigrant or adjust their status to permanent residence while in the United States by no later than September 30, 2008. This rule proposes to simply reference the statutory deadline contained in section 101(a)(27)(C) of the Act, rather than mention a specific date, so that regular updates to the regulations are not required each time Congress extends the sunset date provision. The sunset provision only applies to special immigrant workers in a religious vocation or occupation; it does not apply to the nonimmigrant religious worker category or to special immigrant ministers.

B. Rationale for the Proposed Rule

The former Immigration and Naturalization Service (INS) published a proposed rule in 1995. 60 FR 29771 (June 5, 1995). While USCIS reviewed this earlier proposed rule, the Department determined that further changes to the regulations governing the religious worker program were needed. This was particularly evident given the passage of time, recent indications of fraud in the religious worker program and a renewed focus on eradicating such fraud, and the need to update current regulations to reflect recent statutory amendments.

In March 1999, the Governmental Accountability Office (GAO) identified incidents of fraud in the religious worker program. GAO, Issues Concerning the Religious Worker Visa Program, Report GAO/NSIAD–99–67 (March 26, 1999). The report stated that the fraud often involved false statements by petitioners about the length of time that the applicant was a member of the religious organization, the qualifying work experience, and the position being filled. The report also noted problems with the applicants making false statements about their qualifications and exact plans in the United States.

USCIS has since continued to assess the potential for fraud in the religious worker program. USCIS developed and implemented a benefit fraud assessment to measure the integrity of specific nonimmigrant and immigrant applications and petitions by conducting administrative inquiries on randomly selected cases. The review is referred to as an ''assessment'' because the 220 cases reviewed were not attached to any suspicions of fraud; rather, they were a statistically valid combination of pending and completed cases filed over a six month period that were reviewed to determine the extent of fraud occurring within the sample. This assessment by the USCIS Office of Fraud Detection and National Security (FDNS) confirmed that there was a 33% rate of fraud in the religious worker program. The assessment also indicated patterns of potential fraud and weaknesses that created vulnerabilities for fraud. Through this sample of religious worker cases, FDNS established that a significant number of petitions filed on behalf of religious workers were filed by nonexistent organizations (44% of fraudulent cases) and/or contained material misrepresentations in the documentation submitted to establish eligibility (54% of fraudulent cases). There exists a compelling need to eliminate this fraud. A summary of the USCIS FDNS Religious Worker Benefit Fraud Assessment can be found on the docket at *http://www.regulations.gov* or at *http://www.uscis.gov* under the ''about USCIS'' tab, then under ''Freedom of Information and Privacy Act (FOIA).''

In keeping with the DHS anti-fraud strategy, cases identified with preliminary findings of fraud are referred to the Bureau of Immigration and Customs Enforcement (ICE) for further investigation, possible removal proceedings, or referral for criminal prosecution.

The changes proposed in this rule, if implemented, would decrease the opportunity for fraud in the religious worker program.

III. Analysis of Proposed Rule

This rule proposes changes to the current religious worker process to address concerns about the integrity of the religious worker program. Those changes include expanding the petition requirement for all religious organizations seeking to classify an alien as an immigrant or nonimmigrant religious worker and the possibility of an on-site inspection for religious organizations to ensure the legitimacy of petitioner organizations and employment offers made by such organizations.

USCIS also is proposing new and amended definitions to describe more clearly the regulatory requirements, as well as add specific evidentiary

requirements for petitioning employers and prospective religious workers. This rule also proposes to amend how USCIS regulations reference the sunset date, the statutory deadline by which special immigrant religious workers, other than ministers, must immigrate or adjust status to permanent residence, so that regular updates to the regulations are not required each time Congress extends the sunset date.

USCIS does not believe that the requirements proposed under this rule (as discussed below) would substantially burden the free exercise of religion and therefore this rule should not raise any concerns under the Religious Freedom Restoration Act of 1993. *See* Pub. L. No. 103–141, 107 Stat. 1488, found as amended at 42 U.S.C. 2000bb *et seq.* The regulation of the process that organizations must follow to petition for foreign workers and of foreign workers seeking to enter or remain in the United States exists independently of whether the employing organization is classified as ''religious'' in nature. The existing regulation of the religious worker program is only being continued by the present rule—it is not a new form of regulation or a regulation that otherwise intrudes upon the existing expectations of religious freedom under the First Amendment. USCIS has carefully crafted the additional requirements proposed in an attempt to eradicate fraud in the religious worker program.

The proposed rule applies to the religious organizations who petition for an immigrant or non-immigrant religious worker to perform religious work in the United States. The proposed rule does not make any distinction that is known to be based on the substance of an individual's religious beliefs; it only sets qualifications for the organization seeking to employ an individual, and the qualifications of that individual. USCIS, however, is interested in public comment on this issue and will consider comments received in the development of the final rule.

A. Proposed Changes to Definitions

The applicable definitions for applicants and petitioners for religious worker classification are set forth in 8 CFR 204.5(m) and 214.2(r)(2). This proposed rule adds several definitions, and expands or clarifies others as described below. Because each of the defined terms are repeated in both 204.5 and 214.2, the amendments and additions proposed below apply to both sections as indicated in the regulation text at the end of this rule.

Bona Fide Organizations

USCIS proposes to clarify the existing definition of ''bona fide nonprofit religious organization in the United States'' to mean a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(3), or subsequent amendment, as a religious organization *and* possessing a currently valid determination letter from the IRS confirming such exemption. A church must petition as a bona fide nonprofit religious organization and may not petition as a bona fide organization which is affiliated with a religious organization as a means to avoid the evidentiary requirements applicable to churches. USCIS has determined that this letter is the best means for a petitioner to provide immediate and certain documentation at the time of the initial application that the religious organization is exempt from taxation under section 501(c)(3). The agency welcomes public comments on alternative means for the initial petition to include such documentation.

USCIS also proposes to add to the existing definition of ''bona fide organization which is affiliated with the religious organization in the United States,'' to include entities such as educational institutions, hospitals, or private foundations. See 8 CFR 204.5(m)(2), 214.2(r)(2). Such entities may qualify as a petitioning employer organization for immigration purposes, even if their purpose is not exclusively religious, if documentation is provided to establish the organization's religious purpose and the religious nature of its activities. The eligibility of each organization will be determined on a case-by-case basis. An organization granted section 501(c)(3) status by the IRS as something other than a religious organization must submit the Religious Denomination Certification contained in the Forms I–360 and I–129, signed by the attesting religious organization in the denomination to confirm the petitioning organization's affiliation with the religious denomination. Additionally, the bona fide nonprofit religious organization attesting to the petitioning organization's affiliation with the denomination must be exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 and as evidenced by a currently valid determination letter from the IRS confirming the bona fide nonprofit religious organization's exemption. A church may not present itself as a bona fide organization affiliated with a religious denomination as a means of avoiding the requirement that churches present an IRS tax-exempt letter as a religious organization.

Denominational Membership

USCIS proposes to add a definition of ''denominational membership'' to clarify that, during at least the two-year period immediately preceding the filing of the petition, the alien must have been a member of the same religious denomination as the United States employer that seeks to employ him or her. The definition is premised on the shared faith and worship practices of the institution, rather than on their formal affiliation. The purpose of this definition is to avoid the immigration of religious workers (1) into institutions that are not truly practicing a religion, and (2) based on the alien's recent ''conversion'' to a religious commitment in the interest of immigration status rather than a sincere intention to perform service to one's longstanding faith.

Ministers

A ''minister'' is currently defined as an individual duly authorized by a religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. USCIS proposes to amend this definition to require that an individual also be ''fully trained according to the denomination's standard.'' The revised definition focuses on the denomination's traditional requirements for ordination or its equivalent, because some denominations do not require a particular level of formal academic training or experience.

Religious Denomination

USCIS is modifying the definitions of ''religious denomination'' to clarify that it applies to a religious group or community of believers governed or administered under some form of common ecclesiastical government. See 8 CFR 204.5(m)(2), 214.2(r)(2). The denomination must share a common creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination. The proposed definition does not require a hierarchical governing structure because some legitimate denominations officially shun such structures; instead, the focus is on the commonality of the faith and internal organization of the participating organizations.

Religious Occupation

''Religious occupation'' is now defined as habitual employment in an occupation the duties of which primarily relate to a traditional religious function and that is recognized as a religious occupation within the denomination. USCIS proposes to amend the definition to clarify that the duties of the position must be ''primarily, directly, and substantially related to the religious beliefs or creed of the denomination.'' Examples of religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, missionaries, religious translators, religious broadcasters, youth ministers, religious choir directors or music ministers, or ritual slaughter supervisors. ''Religious occupation'' does not include positions whose duties are primarily administrative or supportive in nature, and any administrative duties must be incident to the substantive, traditionally religious functions. Examples of non-qualifying administrative and support positions include, but are not limited to: janitors; maintenance workers; clerks; secretaries; fund raisers; secular musicians; secular translators; those who sell literature, volunteer as ushers during worship services, serve in the choir, volunteer part-time to assist the clergy, or lead a weekly study group; or similar persons engaged in primarily secular, administrative or support duties. These examples are primarily drawn from the legislative history of IMMACT '90. *Family Unity and Employment Opportunity Immigration Act of 1990,* H. Rept. 101–723(I), 101st Cong., 2nd Sess. (Sept. 19, 1990).

Religious Vocation

USCIS is proposing to revise the definition of ''religious vocation'' to clarify that it refers to a formal lifetime commitment to a religious way of life. The opportunity to immigrate as a religious worker in a vocation should be reserved for those individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion.

Religious Workers

USCIS proposes to add a new definition of ''religious workers'' and to define the term, in part, as individuals engaged in a religious occupation or vocation either in a professional or non-professional capacity. Religious workers in a vocation are those individuals who have made a formal lifetime commitment to a religious way of life. USCIS is proposing to require evidence that the religious denomination has a traditional established class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Such evidence may include, but is not limited to, the taking of vows, or other investitures or ceremonies. USCIS requests comments with regard to other types of available evidence and alternative criteria for establishing the required level of commitment to a religious way of life applicable to diverse religious denominations.

Religious workers in a religious occupation are those seeking to be employed by a religious organization in a religious occupation, the duties of which involve traditional religious functions. The new definition of religious occupation seeks to distinguish more clearly between non-qualifying lay or administrative work, and the kind of committed religious work justifying immigration status. The definition and evidentiary requirement for religious workers in a religious occupation use the bright lines of: (1) compensation by the employer, and (2) either 20 hours per week for nonimmigrants or 35 hours per week (full-time) for special immigrants.

The revised requirements for immigrant petitions and nonimmigrant status require that the alien's work be compensated by the employer because that provides an objective means of confirming the legitimacy of and commitment to the religious work, as opposed to lay work, and of the employment relationship. Unless the alien has taken a vow of poverty or similarly made a formal lifetime commitment to a religious way of life, this rule requires that the alien be compensated in the form of a salary or in the form of a stipend, room and board, or other support so long as it can be reflected in a W–2, wage transmittal statements, income tax returns, or other verifiable IRS documents. USCIS recognizes that legitimate religious work is sometimes performed on a voluntary basis, but allowing such work to be the basis for an R–1 nonimmigrant visa or special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program. In this rule, USCIS is proposing to implement bright lines that will ease the verification of petitioner's claims in the instances where documentary evidence is required. It should be noted that this rule greatly reduces the burden on petitioners for submission of evidence. For example, petitioners are currently required to submit evidence of the beneficiary's education and training whereas under this proposed rule they need only attest to the beneficiary's eligibility. Documentary evidence is generally only required when it is in the form of an official government document or similarly provides added reliability. This change to the evidentiary requirements, in favor of an attestation scheme, can only successfully insure against fraud and abuse where petitioner's claims can be verified. In accordance with 8 CFR 214.2(b)(1), members of a religious denomination coming temporarily and solely to do missionary work on behalf of a religious denomination may do so by obtaining a B–1 visa and may be granted extensions in increments of up to one year (provided such work does not involve the selling of articles or the solicitation or acceptance of donations).

The issue of training is also clarified. The rules do not require a specific set of training, but a religious worker must be minimally competent to do the work and must intend to do it. Religious study or training for religious work in the United States does not justify special immigrant status, though an R–1 religious worker may pursue study or training incident to status, as is appropriate in several other nonimmigrant classifications. Aliens seeking to pursue religious study in the United States not incident to R–1 status may pursue options such as F–1 or J–1 classifications. All of these definitions recognize that some administrative duties are incidental to many religious functions, but require that the religious functions predominate.

B. Proposed Petitioning Requirements

USCIS is proposing to impose a new petition requirement on employers or organizations seeking to classify an alien as a religious worker, whether as an immigrant (Form I–360) or nonimmigrant (Form I–129). A petition requirement already exists for special immigrants and for organizations that seek to extend the stay or change status of a nonimmigrant religious worker already in the United States. The addition of the petition requirement for nonimmigrants seeking an R–1 visa or R–1 visa-exempt entry is needed in order to facilitate current and future on-site inspections and to further ensure the integrity of the program. Only the employing, United States organization will be allowed to complete and submit the Form I–129 or Form I–360 on behalf of the beneficiary. Allowing petitions to be filed by the aliens themselves or by third parties does not support the

integrity of the process. Given that there always must be an employing United States organization; this requirement should not pose any undue hardship on filers.

USCIS also is proposing to require that the petitioning employer complete and submit an attestation along with the Form I–129 or the Form I–360, for non-immigrants and special immigrants, respectively. The attestation will serve to establish that the alien will be entering the United States solely to carry on the vocation of a minister or to work in a religious vocation or occupation, that the alien is qualified for such position, and that the job offer is legitimate. These attestations must be executed by an authorized official of the organization. This requirement is designed to ensure that the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

C. On-Site Inspections

This rule proposes that USCIS may conduct on-site inspections of petitioning organizations seeking to employ either an R–1 nonimmigrant or special immigrant religious worker. Pursuant to its general authority under section 103 of the INA and 8 CFR part 103, USCIS may conduct audits, on-site inspections, reviews or investigations, to ensure that an alien is entitled to the benefit sought and that all laws have been complied with before and after approval of such benefits. DHS has determined that the option to conduct such on-site inspections is vital to the integrity of the religious worker program and petitioning process. A recent assessment by the FDNS confirmed that there was a high percentage of fraud (33%) in the religious worker program. Through the statistically valid sample of Form I–360 religious worker petitions, FDNS established that a significant number of petitions filed on behalf of religious workers were filed by nonexistent organizations and/or contained material misrepresentations in the documentation submitted to establish eligibility. By promulgating the option to conduct on-site inspections as proposed in this rule, USCIS is emphasizing this tool, with other program enhancements, as a deterrent to fraud and an aid in the detection of fraudulent petitions in the R–1 nonimmigrant and special immigrant religious worker categories. This rule will also allow DHS to monitor religious workers and ensure they maintain lawful status while in the United States. The purpose of this activity is to eliminate the inappropriate award of immigration benefits to unqualified individuals.

D. Evidentiary Requirements for Petitioning Organizations

USCIS also proposes to change the evidentiary requirements for petitioning employer organizations seeking a religious worker. Existing regulations require that the organization submit documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. USCIS is proposing to specifically require that petitioning organizations submit a currently valid determination letter from the Internal Revenue Service (IRS). Likewise, a group of religious organizations, that are recognized as tax exempt under a group tax exemption, must provide the most current determination letter from the IRS that establishes that the group is an organization as described in section 509(a)(1) of the Internal Revenue Code of 1986, 26 U.S.C. 509(a)(1), and that the group's tax exemption is in accordance with section 501(c)(3) of the Internal Revenue Code of 1986. USCIS recognizes that in some cases such a determination letter will require the payment of a user fee to the IRS. See IRS Form 8718 (rev. June 2006).

Although churches may not be required to obtain a section 501(c)(3) exemption for tax purposes, such an exemption is required when requesting immigration benefits on behalf of an alien. *See* Internal Revenue Service, *Tax Guide for Churches and Religious Organizations: Benefits and responsibilities under the Federal Tax Law* (IRS pub. no. 1828, Rev. Sept. 2006); *compare*, section 101(a)(27)(C)(ii)(III) of the INA, 8 U.S.C. 1101(a)(27)(C)(ii)(III). Entities seeking to employ alien religious workers should be willing to request IRS recognition of their tax-exempt status, and their certifications to IRS under applicable tax rules will help ensure the integrity of their participation in the immigration process. In addition, the proposed regulation would modify the current regulatory text by replacing the ''it'' with ''organization'' in order to clarify that the organization must be exempt from taxation. USCIS requests comments regarding how to document bona fide tax exempt status, including the availability of other government agencies that may certify the bona fide tax exempt status of organizations located in United States territories that may be outside the jurisdiction of the IRS.

E. Changes Unique to the Special Immigrant Religious Worker Classification

Current regulations describing various categories of religious workers have led to much confusion. USCIS is now proposing to reorganize 8 CFR 204.5(m) in its entirety and simplify the religious worker classification by dividing it into three distinct categories: ministers, individuals engaged in a religious vocation, and individuals engaged in a religious occupation. Individuals within the latter two categories may be either professionals or non-professionals.

The proposed rule recognizes that the prior religious work need not correspond precisely to the type of work to be performed; for instance, a former minister may immigrate to work as a missionary, and a former missionary, now ordained, may immigrate to work as a minister. The rule codifies longstanding recognition that a break in the continuity of religious work during the two years immediately preceding the filing of the petition will not affect eligibility if the alien has performed as a religious worker on a compensated, full-time basis, the break did not exceed two years, and the nature of the break was for further religious training or for sabbatical and did not involve unauthorized work in the United States.

The proposed rule also clarifies that qualifying prior experience (that is, during the two years immediately preceding the petition or preceding any acceptable interruption of religious work) acquired in the United States must have been authorized under United States immigration law and in conformity with all other laws of the United States such as the Fair Labor Standards Act of 1938, 29 U.S.C. 201 *et seq.*, 52 Stat 1060, as amended. If the alien was employed in the United States during the two years immediately preceding the filing of the application, the petitioner must submit the alien's W–2 wage statements, the employer's wage transmittal statements, and the transcripts of the alien's processed income tax returns (IRS Form 4506T) for the preceding two years reflecting such work. Additionally, the alien must have belonged to the same denomination as the petitioner organization throughout the two years of qualifying employment. The evidentiary requirements in the rule also will ensure that the tax laws have been generally observed. Allowing periods of unauthorized, unreported employment to qualify an alien toward

permanent immigration undermines the integrity of the United States immigration system.

USCIS proposes to remove existing 8 CFR 204.5(m)(3)(iv), which currently states that the director may request appropriate additional evidence relating to the eligibility under section 203(b)(4) of the Act, 8 U.S.C. 1153(b)(4), of the religious organization, the affiliated organization, or the alien. This paragraph is unnecessary, since it merely repeats general adjudicative procedures found in 8 CFR 103.2. A similar provision has been stricken from the nonimmigrant religious worker regulations.

F. Changes Unique to the Nonimmigrant Religious Worker Classification

To maintain consistency in the adjudication of the nonimmigrant and special immigrant religious worker classifications, DHS has made conforming changes to the nonimmigrant religious worker classification (R visa category), where appropriate, to reflect the changes proposed in the definitions and filing requirements for special immigrant religious workers.

Some proposed requirements, such as the period of authorized stay, are applicable only to the R visa category. Under current regulations, the standard period of stay is three years (with one potential extension of two years). USCIS proposes to change the standard period of stay to one year (with two potential extensions of two years each). An alien may apply for a one-year period of stay by filing the Form I–129 and the R Classification Supplement with the required attestation section completed and supporting documentation. This one-year admission runs from the date of initial admission in order to provide the alien the benefit of the full year and also to accommodate for any delay in consular processing. An alien may apply for additional periods of stay by filing the Form I–129 with USCIS and through demonstration of the alien's compensation by the approved employer in a manner that assures compliance with tax policies and provides better assurance to USCIS that the required employment relationship truly exists. Any request for R–1 status, admission beyond the first year of R–1 status, or any period of extension of stay, must include initial evidence of the previous R–1 employment in the form of the alien's W–2 wage statements, the employer's wage transmittal statements, and transcripts of the alien's processed income tax returns (IRS Form 4506T) for any preceding period spent in the United States in R–1 status. For any period of such employment not yet reflected in documents, such as W–2s, wage transmittal statements or income tax returns, required to be completed or filed at the time of filing the petition, then pay stubs relating to payment for such employment shall also be presented for work not yet reflected in such documents. Aliens who have taken a vow of poverty or similar formal lifetime commitment to a religious way of life may submit evidence of such commitment in lieu of the above documentary requirements, but must also submit evidence of all financial support (including stipends, room and board, or other forms of support) received while in R–1 status.

The proposed rule will require that every petition for R–1 classification must be initiated by filing a Form I–129 with USCIS. Beneficiaries will no longer be able to obtain an R–1 visa or status at a United States Consulate abroad or at a port-of-entry without the prior approval of the Form I–129 by USCIS. Visa-exempt aliens will present the USCIS approval of the Form I–129 at the port-of-entry when applying for admission in R–1 status. Only a prospective or existing employer can complete and file the Form I–129, and the employer must notify USCIS when the individual on an R–1 visa has been released from his or her employment or is no longer working the minimally required hours.

DHS is proposing to exempt from the five-year maximum stay certain aliens whose work in the United States is intermittent or seasonal. DHS requests comments on the need for this exemption in the religious worker context. Lastly, the existing rule is clarified to allow R–2 spouses and children to remain in the United States for the same time limits as the principal alien. Nevertheless, as with any dependent nonimmigrant status, the primary purpose of the spouse or child must be to join or accompany the principal R–1 alien in the United States. USCIS may limit, deny or revoke on notice any stay for an R–2 that is not primarily intended for that purpose or is intended to evade the normal requirements of the nonimmigrant classification that otherwise would apply when the principal alien is absent from the United States. An R–1 alien may not use occasional work visits to the United States in order to ''park'' the R–2 family members in the United States for extended periods while the principal alien is absent.

IV. Regulatory Requirements

A. Regulatory Flexibility Act

USCIS has reviewed this regulation in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)). USCIS is not able at this time to certify this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule amends existing regulations pertaining to the special immigrant and nonimmigrant religious worker classifications and also is designed to address fraud in, and ensure the integrity of, the religious worker program. This rule affects only those religious organizations and bona fide organizations affiliated with a religious denomination (which may include educational institutions, hospitals, and private foundations) that are seeking to classify an alien as a nonimmigrant religious worker or special immigrant religious worker. DHS estimates that USCIS likely will receive approximately 22,338 petitions filed annually from such organizations and that in most instances, such organizations would be considered ''small entities'' as that term is defined under 5 U.S.C. 601. The 22,338 figure is derived from the total number of Forms I–360 and I–129 religious worker petition filings in the prior fiscal year (4,617 Form I–360s and 5,939 Form I–129s filed for change of status or extension of stay of R–1 nonimmigrants), plus 11,782 visas issued by the Department of State for initial R–1 nonimmigrant visas, which USCIS projected will be the number of new petitions it will see for the R–1 nonimmigrant category in light of the new petition requirement for that classification. The 22,338 figure, however, does not take into account petitioning organizations that file petitions for several potential religious workers. Further, there are no available statistics on the total number of religious organizations and affiliated bona fide organizations that may exist in the United States and of that the number the percentage of organizations that ultimately may seek to hire a foreign national to perform work in a religious occupation or vocation. The Department, therefore, seeks comments on the extent of any potential economic impact of this rule on small entities.

USCIS recognizes that there will be certain additional costs and burdens on the religious organizations and bona fide organizations affiliated with a religious denomination due to the new petitioning requirement for R–1 nonimmigrants. The estimated costs and benefits are described in detail in the Executive Order 12866 section below.

Even assuming that the number of petition filings remains constant annually and projecting that approximately 15,637 (70% of the 22,338 petitions) individual organizations will seek religious workers, USCIS has determined that the total costs to a religious or affiliated bona fide organization of for a religious worker petition ($190) would represent a small percentage of the organization's total annual wage cost for the beneficiary of the religious worker petition (depending on the type of worker sought and assuming, for purposes of this analysis, that the position is salaried). USCIS also projects that the petition cost would be an even smaller percentage of the petitioning organization's overall operating budget. These percentages were calculated based on Bureau of Labor Statistics indicating national average wages for the private sector ($17.25/hour), religious workers ($11.41/hour), Directors of Religious Activities/ Education ($16.41/hour), and clergy ($19.23/hour) and based on the standard 35 hours per week for a full-time worker for a full year. Finally, petitioning organizations will have an additional burden in terms of time needed to complete attestation and certification requirements related to the organization's tax exempt status and the potential religious worker's qualifications and to collect and submit additional information related to the employer's tax exempt status and an attestation regarding the potential religious worker's qualifications and duties, etc. USCIS anticipates, however, that most of this information will be readily available to the organization. Thus, any impact on religious or affiliated organizations or individuals to comply with these requirements should be minimal.

Additionally, USCIS recognizes that many religious organizations will be required to pay a user fee to the IRS to acquire a currently valid determination letter of their IRC section 501(c)(3) status. IRS Forms 1023 and 8718 (rev. June 2006). Very small organizations with gross revenues of not more than $10,000 may be charged a fee of $300 by the IRS to determine their current 501(c)(3) status. Organizations with gross receipts in excess of $10,000 during the previous four years or anticipating gross receipts averaging more than $10,000 during the first four years, may be charged a fee of $750 by the IRS to determine their current 501(c)(3) status. USCIS does not currently possess sufficient information to determine which organizations would fall into each category or otherwise not be required to pay such a fee. Accordingly, DHS invites comments on the scope of these costs and more accurate means for defining these costs. Again, DHS invites comments on ways that a religious organization could demonstrate that they meet the requirements without providing a 501(c)(3) letter, but without USCIS being required to analyze sizeable paperwork to verify the status. USCIS is also pursuing alternative avenues of verification directly with the IRS.

Considering the importance of preventing fraud in the religious worker program and of ensuring that only legitimate religious organizations and bona fide affiliated organizations participate in the process, DHS believes that this proposed rule will have a positive impact overall. USCIS anticipates a net reduction of many of the adjudicative resources that might be expended in determining whether a religious worker petition involves potential fraud or misrepresentations. USCIS, however, specifically invites public comment on the estimated cost to petitioning religious organizations and bona fide organizations affiliated with a religious denomination to comply with the new religious worker petition requirements and prepare for the on-site inspections.

B. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

D. Executive Order 12866 (Regulatory Planning and Review)

This rule is considered by the Department of Homeland Security to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Assessment of the Costs

This proposed rule amends existing regulations pertaining to the special immigrant and nonimmigrant religious worker classifications. For fiscal year 2005, 3,230 individual organizations filed 4,617 petitions with USCIS seeking special immigrant religious workers. Also, 5,939 petitions were filed with USCIS for extensions and changes of status for R–1 nonimmigrant religious workers. Not all of these R–1 petitions represent filings by a single religious organization or bona fide organization affiliated with a religious denomination. These figures also do not account for instances where a single religious organization or affiliated bona fide organization filed petitions for several potential religious workers.

Currently, there is no petition requirement for religious organizations or bona fide affiliated organizations initially seeking a nonimmigrant religious worker. To estimate the number of organizations that may be affected by the new petition requirement for the nonimmigrant religious worker classification (R–1), USCIS looked at the number of nonimmigrant visas that were issued by the Department of State for religious workers in 2004. Department of State issued 11,782 visas for 2004; however, this number does not exclude those aliens who potentially have multiple visas or those aliens who were previously in R–1 nonimmigrant status and received extension of their status by obtaining a new visa and reentering the United States (rather than seeking an extension while in the United States).

Assuming the number of religious worker petitions filed annually and the number of religious or affiliated organizations seeking workers remain constant, DHS projects that approximately 15,637 individual organizations will seek religious workers each fiscal year. This projection is based on the percentage of religious organizations and bona fide affiliated organizations that sought special immigrant religious workers in FY 2005 (70%) applied against the total population of projected annual petition filings of 22,338. In order to differentiate the amount attributed to each form associated with the Religious Worker program (Form I–129 and I–360) the following figures will be used to estimate costs and burden hours for

each form. Based on the percentage of religious organizations and bona fide affiliated organizations that sought special immigrant religious workers in FY 2005 (70%) applied against the population of projected annual petition filings for the Form I–129, DHS estimates that there will be approximately 12,407 (17,721 × 70%) Form I–129 filings for the nonimmigrant religious worker, and 3,230 (4,617 × 70%) for the Form I–360 which comprises the total 15,637 (22,338 × 70%) total projected filings for both forms.

The current fees for the Form I–129, Petition for Nonimmigrant Worker, and the Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant are $190. USCIS is proposing to modify these fees in a separate rule. USCIS already has an approved information collection for the Form I–129, OMB 1615–0009, and Form I–360, OMB 1615–0020. Petitioning organizations are required to submit additional initial evidence related to their tax-exempt status and an attestation regarding the potential religious worker's qualifications and duties, etc. Information collection costs, therefore, are increased by these requirements, which would increase the existing information collection burden by roughly 15 minutes per respondent for the new attestation for both the Form I–129 and the Form I–360. If there are 15,637 respondents, this increases the information collection burden by approximately 3,908 hours, which at $16 per hour increases public costs by $62,528. DHS estimates that the Form I–129 will have 12,407 of the 15,637 estimates filings which would be an increase in information collection burden by approximately 3,101 hours for the attestation which at $16 per hour increases the public costs for the Form I–129 by $49,616. DHS estimates that the Form I–360 will have 3,230 of the 15,637 estimates filings (based on the FY05 filings stated earlier) which would be an increase in information collection burden by approximately 807 hours which at $16 per hour increases the public costs for the Form I–360 by $12,912. The total cost of petitioning under this proposed rule is estimated to be $6,510,103. ($5,165,373 for the Form I–129 and $1,344,730 for the Form I–360). In addition, changes in filing requirements will increase the frequency of filings for extensions or changes of status over a five-year period, increasing the total costs to the public to $6,665,503.

In addition, several respondents are expected to pay the fee required under Internal Revenue Regulations of ($750) for obtaining a section 501(c)(3) status determination letter from that agency. Since this is a new requirement, USCIS has no data on which to base an estimate of how many will be required to resort to this course of action. The agency has anecdotal stories from adjudications and other programs indicating that these letters are regularly lost or destroyed, and the existence of the IRS form points to its eventuality. Nonetheless, even assuming that all 15,637 religious worker petitions expected to be received per year are required to pay this fee, the total cost of such requests would be under $12 million. USCIS feels that the actual number will be much less and welcomes comments on this impact.

Together the total cost of these proposed changes are estimated to be $18,393,253, which remains well below the threshold of an economically significant rule as provided by the Executive Order.

Assessment of Benefits

The cost of the proposed rule's increased information collection is outweighed by the overall benefit to the public of an improved system for processing religious workers.

The proposed rule is a vital tool in furthering the protection of the public by (1) more clearly defining the requirements and process by which religious workers may gain admission to the United States, and (2) increasing the ability of DHS to deter or detect fraudulent petitions and to investigate and refer matters for prosecution. A recent assessment by the USCIS Office of Fraud Detection and National Security confirmed that there was a high percentage of fraud in the religious worker program. Through this statistically valid sample of I–360 religious worker petitions, FDNS established that a significant number of petitions filed on behalf of religious workers were filed by nonexistent organizations and/or contained material misrepresentations in the documentation submitted to establish eligibility. The benefits of decreased fraud and increased national security tend to be intangible, thus, the benefits of such reduction in the high level of fraud in this program are difficult to quantify. On the other hand, the lack of such protections become quite tangible as soon as the lack of protections such as those proposed in this rule are manifested in the tangible economic or societal damage caused by a recipient of a fraudulent religious worker visa. The changes to the petition requirements for all religious workers as well as other program enhancements, such as a possible on-site inspection, are intended to increase detection of fraudulent petitions in this category and increase the ability of DHS to monitor that the eligible alien maintains status during their stay as valued guests in this country.

This rule amends requirements for the special immigrant and nonimmigrant religious worker visa classifications. It will not significantly change the number of persons who immigrate to the United States based on employment-based petitions or temporarily visit based on a nonimmigrant visa petition. This rule is intended to benefit the public by clarifying definitions associated with the religious worker classifications, acceptable evidence, and specific religious worker qualification requirements. Balanced against the costs and the requirements to collect information, the burden imposed by the proposed rule appears to USCIS to be justified by the benefits.

E. Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

Any prospective employer must file a Form I–129, Petition for Nonimmigrant Worker, or Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant seeking to classify an alien as a religious worker under sections 101(a)(15)(R) and (27)(C) of the Act. The Forms I–129 and I–360 are considered information collections under the Paperwork Reduction Act (PRA). The Office of Management and Budget (OMB) has previously approved both the Forms I–129 and I–360 for use. The OMB control numbers for these collections for the Form I–129 is OMB 1615–0009 and for the Form I–360 is OMB 1615–0020.

This proposed rule extends the number of respondents for Form I–129 and adds new information collections with respect to evidentiary attestations

for both the Form I–129 and Form I–360. These requirements are considered information collections subject to review by OMB under the Paperwork Reduction Act of 1995. Written comments are encouraged and will be accepted until June 25, 2007. When submitting comments on the information collection, your comments should address one or more of the following four points.

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of any and all appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of Information Collection for Attestation in the Form I–129

(1) *Type of information collection:* Revision of currently approved collections.

(2) *Title of Form/Collection:* I–129, Petition for a Nonimmigrant Worker/ Evidentiary requirements; religious worker.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–129, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals. The information collection is necessary in order for USCIS to make a determination whether the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination, that the job offer is legitimate, that the beneficiary qualifies for the classification sought, and that the employer is providing compensation in compliance with the Internal Revenue Code.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond to the new requirements:* 381,355 respondents at 3 hours per response. In addition, the on-site inspection is estimated to be an additional 65 minutes for each religious organization (12,407 respondents).

(6) *An estimate of the total of public burden (in hours) associated with the collection:* Total reporting burden hours is 1,157,501.

All comments and suggestions or questions regarding additional information should be directed to the Department of Homeland Security, U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529; Attention: Richard A. Sloan, Director, 202–272–8377.

Overview of Information Collection for Attestation in the Form I–360

(1) *Type of information collection:* Revision of currently approved collections.

(2) *Title of Form/Collection:* Form I–360 Petition for Amerasian, Widow(er), or Special Immigrant /Evidentiary requirements; religious worker.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–360, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals. The information collection is necessary in order for USCIS to make a determination whether the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination, that the job offer is legitimate, that the beneficiary qualifies for the classification sought, and that the employer is providing compensation in compliance with the Internal Revenue Code.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond to the new requirements:* 16,914 respondents at 2.25 hours per response.

(6) *An estimate of the total of public burden (in hours) associated with the collection:* Total reporting burden hours is 41,554.

All comments and suggestions or questions regarding additional information should be directed to the Department of Homeland Security, U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529; Attention: Richard A. Sloan, Director, 202–272–8377.

List of Subjects

8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 204—IMMIGRANT PETITIONS

1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255, 1641; 8 CFR part 2.

2. Section 204.5 is amended by revising paragraph (m) to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(m) *Religious workers.* (1) Any prospective employer may file a Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant visa petition, on behalf of an alien for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) of the Act special immigrant religious worker. Such a petition may be filed for an alien who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination that has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of working, on a compensated, full-time basis, in one of the following capacities:

(i) The vocation of a minister of that religious denomination; or

(ii) A religious vocation; or

(iii) A religious occupation.

(2) The alien also must be coming to work for a bona fide nonprofit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 or subsequent amendment, at the request of the organization to fulfill a reasonable need of the

organization. All three types of religious workers must have been performing, on a compensated, full-time but not necessarily exclusive basis, as a minister or in a religious vocation or occupation in the denomination continuously for at least the two-year period immediately preceding the filing of the petition. A full-time position is considered to be 35 hours per week. The prior religious work may be either abroad or in lawful immigration status in the United States, and must have occurred after the age of 14 years. The prior religious work need not correspond precisely to the type of work to be performed; for instance, a former minister may immigrate to work as a missionary, and a former missionary, now ordained, may immigrate to work as a minister.

(3) A break in the continuity of the required religious work during the two years immediately preceding the filing of the petition will not affect eligibility so long as:

(i) The alien was still employed as a religious worker on a compensated, full-time basis,

(ii) The break did not exceed two years, and

(iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

(4) *Definitions.* As used in this paragraph (m) the term:

Bona fide nonprofit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, as a religious organization and possessing a currently valid determination letter from the IRS confirming such exemption. A church must petition as a bona fide nonprofit religious organization and may not petition as a bona fide organization that is affiliated with an organization as a means to avoid the evidentiary requirements applicable to churches.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with and routinely and substantially acts to further the religious goals of the religious denomination, as attested to by a bona fide nonprofit religious organization in the United States within the denomination. The bona fide nonprofit religious organization attesting to the petitioning organization's affiliation must be exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, and as evidenced by a currently valid determination letter from the IRS confirming the bona fide nonprofit religious organization's exemption. ''Affiliation'' for this particular purpose does not require legal relationship in the form of ownership or control by the denomination or by religious organizations within the denomination, but it does require a solid and public commitment by the affiliated organization to the tenets of the religious denomination.

Denominational membership means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will be employed. Membership in religious denominations, including interdenominational organizations, sharing forms of government and worship, creeds, and disciplinary practices may be sufficient to show denominational membership. The denominational membership requirement shall be interpreted in a manner to allow qualification of persons who have demonstrated a sincere commitment to the religious faith of the United States organization of employment, and to prevent qualification by persons who may have taken on the faith of the United States organization for purposes of facilitating eligibility for United States immigrant or nonimmigrant status.

Minister means an individual duly authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that denomination. The term does not include a lay preacher or a person not authorized to perform such duties. In all cases, there must be a rational relationship between the activities performed and the religious calling of the minister. The minister must also intend to work solely as a minister in the United States, but the performance of administrative duties incident to the predominant, essentially religious duties does not exclude one from the definition of minister.

Religious denomination means a religious group or community of believers governed or administered under a common type of ecclesiastical government. Members of a denomination must share a recognized common creed or statement of faith, a common form of worship, a common formal code of doctrine and discipline, religious services and ceremonies, common established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination. For the purposes of this definition, religious organizations that are recognized as tax exempt under a group tax exemption issued pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as a religious organization will be presumed to belong to the same religious denomination, but such official affiliation is not necessary for denominational membership.

Religious occupation means habitual employment in an occupation the duties of which primarily relate to a traditional religious function and which is recognized as a compensated religious occupation within the denomination. The duties of the position must be primarily, directly and substantively related to, and must clearly involve inculcating or carrying out the religious creed and/or beliefs of the denomination. The position must be traditionally recognized by the religious organization or similar organizations as a compensated occupation within the denomination. A religious occupation, in contrast to a vocation, must be salaried, or otherwise compensated by stipend, room and board, or other support that is reflected in an alien's W–2, wage transmittal statements, or income tax returns. Examples of occupations that can qualify as a religious occupation include liturgical workers, religious instructors, religious counselors, cantors, catechists, missionaries, religious translators, religious broadcasters, youth ministers, religious choir directors or music ministers, or ritual slaughter supervisors. ''Religious occupation'' does not include positions whose duties are primarily administrative or supportive in nature, and any administrative duties must be incident to the substantive, traditionally religious functions. Examples of non-qualifying administrative and support positions include, but are not limited to: janitors; maintenance workers; clerks; secretaries; fund raisers; secular musicians; secular translators; those who sell literature, volunteer as ushers during worship services, serve in the choir, volunteer part-time to assist the clergy or teach religion classes; or similar persons engaged in primarily secular, administrative or support duties. It is expected that members of religious organizations volunteer their time even in traditionally religious functions, and immigration status will not be conferred to lay persons who have arranged to be paid for

traditionally volunteer work in order to obtain immigration status. Religious study or training for religious work does not constitute religious work, but a religious worker may pursue study or training incident to status. For nonimmigrant purposes, prior experience or training is not required, the petition must demonstrate that the alien truly intends to take up the described religious occupation, and the position must require at least 20 hours per week of compensated service. For immigrant petitions only, the position offered must be permanent and full-time, and the alien's experience in the preceding years must have been full-time. Full-time is considered to be 35 hours per week.

Religious vocation means a formal lifetime commitment to a religious way of life. There must be evidence that the religious denomination has a traditional established class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. It requires that the individual make a formal lifetime commitment through vows, or other investitures or ceremonies, to this class of individuals and religious way of life. Examples of individuals with a religious vocation include, but are not limited to nuns, monks, and religious brothers and sisters.

Religious worker means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity. Such individuals may work in a religious vocation if they have made a formal lifetime commitment to a religious way of life and in a religious occupation if the duties predominantly involve traditional religious functions.

(5) *Form and filing requirements.* The Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant, along with the fee specified in 8 CFR 103.7(b)(1), and supporting evidence must be filed at the appropriate USCIS service center. Such a petition must be filed by the prospective United States employer on behalf of an alien who is either abroad or in the United States. After the date stated in section 101(a)(27)(C) of the Act (as amended), immigration or adjustment of status on the basis of this section is limited solely to ministers of religion.

(6) *Attestation.* The Form I–360 contains an attestation section which an authorized official of the prospective employer must complete, sign and date. The term ''prospective employer'' refers to the organization or institution where the alien will be performing the proffered duties. The attestation includes a statement which certifies under penalty of perjury that the contents of the attestation are true and correct to the best of his or her knowledge. This attestation must be submitted by the prospective employer along with the petition. In the Form I–360, the prospective employer must specifically attest to the following:

(i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) The number of members of the prospective employer's organization, the number and positions (with brief descriptions) of employees in the prospective employer's organization, the number of aliens holding R visa status currently employed or employed within the past five years by the prospective employer's organization, and the number of special immigrant religious worker and R visa petitions and applications filed by or on behalf of any aliens to be employed as ministers or religious workers for the prospective employer in the past five years;

(iii) The title of the position offered to the alien, the complete package of compensation being offered and a detailed description of the alien's proposed daily duties;

(iv) That the alien will be employed at least 35 hours per week and such services are needed on a full-time basis;

(v) The specific location(s) of the proposed employment;

(vi) That the alien has worked as a compensated, full-time religious worker for the two years immediately preceding the filing of the application and is otherwise qualified for the position offered;

(vii) That the alien has been a member of the denomination for at least two years immediately preceding the filing of the application;

(viii) That the alien will not be engaged in secular employment, and any compensation for religious work will be paid to the alien by the attesting employer;

(ix) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become a public charge, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization, and that the petitioner will notify USCIS of any changes to the alien's employment; and

(7) *Evidence relating to the petitioning organization.* A petition shall include the following initial evidence relating to the petitioning organization:

(i) A currently valid determination letter from the Internal Revenue Service (IRS) showing that the organization is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, as a religious organization; or

(ii) For religious organizations that are recognized as tax exempt under a group tax exemption, a currently valid determination letter from the IRS establishing that the group is an organization as described in sections 509(a)(1) of the Internal Revenue Code of 1986, and that the group's tax exemption is in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, as a religious organization; or

(iii) For a bona fide organization which is affiliated with the religious denomination, if the organization was granted a section 501(c)(3) exemption as something other than a religious organization:

(A) A currently valid determination letter from the IRS showing that the organization is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, not necessarily as a religious organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization;

(D) A Religious Denomination Certification. The Form I–360 contains a ''Religious Denomination Certification'' section which the petitioner must have the attesting religious organization complete, sign and date. The ''Religious Denomination Certification'' includes a statement certifying under penalty of perjury that the petitioning organization is affiliated with the religious denomination. The certification must be submitted by the petitioner along with the petition and attestation; and

(E) A currently valid determination letter from the IRS evidencing that the attesting organization is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, as a religious organization.

(8) *Evidence relating to the qualifications of a minister.* If the alien is a minister, the petitioner must submit

as initial evidence a copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological institution is accredited by the denomination. For denominations that do not require a prescribed theological education, the petitioner must submit evidence of the denomination's requirements for ordination to minister, evidence of the duties allowed to be performed by virtue of ordination, evidence of the denomination's gradations of ordination, if any, and evidence of the alien's completion of the denomination's requirements for ordination.

(9) *Evidence relating to the alien's prior employment.* Initial evidence must include evidence of the alien's prior religious employment. If the alien was employed in the United States during the two years immediately preceding the filing of the application, the petitioner must submit the alien's W–2 wage statements, the employer's wage transmittal statements, and the transcripts of the alien's processed income tax returns for the preceding two years reflecting such work. If more than six months of such employment is not yet reflected in the documents such as W–2s, wage transmittal statements or income tax returns required to be completed or filed at the time of filing the petition, then pay stubs relating to payment for such employment shall also be presented for work not yet reflected in such documents. If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of compensation and religious work. Aliens who have taken a vow of poverty or similar formal lifetime commitment to a religious way of life may submit evidence of such commitment in lieu of the above documentary requirements, but must also submit evidence of all financial support (including stipends, room and board, or other support) received in the preceding two years. Qualifying prior experience (that is, during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work) must have occurred after the age of 14, and, if acquired in the United States, must have been authorized under United States immigration law.

(10) *Audits, inspections, assessment, verification, spot checks, and site visits.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

* * * * *

PART 214—NONIMMIGRANT CLASSES

3. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2003 Comp., p. 278), 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1372, 1379, 1731–32; section 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively, 8 CFR part 2.

4. Section 214.2 is amended by revising paragraph (r) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(r) *Religious workers*—(1) *General.* Under section 101(a)(15)(R) of the Act, an alien who, for at least the two years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit religious organization in the United States, may be admitted temporarily to the United States to carry on the activities of a religious worker for a period not to exceed five years. The alien must be coming to or remaining in the United States solely for one of the following purposes:

(i) As an employee of a religious organization within the denomination, or of a bona fide organization which is affiliated with the religious denomination, at the request of the organization;

(ii) To carry on the vocation of a minister of the religious denomination; or

(iii) To work in a religious vocation or occupation.

(2) An alien may work for more than one qualifying employer as long as each qualifying employer submits the Form I–129 and R Classification Supplement, and, where applicable, accompanying documentation, submitted either in a single petition or through an additional petition.

(3) *Definitions.* As used in this paragraph (r), as applicable to the proposed employment and to the membership in the two years preceding the filing of the petition, the definitions of terms set forth at 8 CFR 204.5(m)(1), concerning immigrant religious workers, shall apply to nonimmigrant religious workers.

(4) *Requirements for admission/change of status; time limits*—(i) *Principal applicant.* If otherwise admissible, an alien who meets the requirements of section 101(a)(15)(R) of the Act may be admitted as an R–1 alien or changed to R–1 status for an initial period of up to one year from date of initial admission. If visa-exempt, the alien must present the original Notice of Action, Form I–797 approval notice (not a copy), at the port of entry.

(ii) *Spouse and children.* The spouse and children of an R–1 alien who are accompanying or following to join the principal may be accorded R–2 status and admitted or have their R–2 status extended for the same period of time and subject to the same limits as the principal, regardless of the time such spouse and children may have spent in the United States in R–2 status. Neither the spouse nor children may accept employment while in the United States in R–2 status.

(iii) *Extension of stay or readmission.* An R–1 alien who is maintaining status or is seeking readmission and who satisfies the eligibility requirements of this section may be granted an extension of R–1 stay or readmission in R–1 status for the validity period of the petition, up to 2 years, provided the total period of time spent in R–1 status does not exceed a maximum of five years. A petition for an extension of R–1 status must be filed by the United States employer on Form I–129, Petition for a Nonimmigrant Worker, along with the R Classification Supplement containing the attestation, the fee specified in 8 CFR 103.7(b)(1), and the supporting evidence, at the appropriate USCIS service center.

(iv) *Limitation on total stay.* An alien who has spent five years in the United

States under section 101(a)(15)(R) of the Act may not be readmitted to, or receive extension of stay in, the United States under the R visa classification unless the alien has resided abroad and been physically present outside the United States for the immediate prior year. The limitations in this paragraph shall not apply to R–1 aliens who did not reside continually in the United States and whose employment in the United States was seasonal or intermittent or was for an aggregate of six months or less per year. In addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. To qualify for this exception, the petitioner and the alien must provide clear and convincing proof that the alien qualifies for such an exception. Such proof shall consist of evidence such as arrival and departure records, transcripts of processed income tax returns, and records of employment abroad. The primary purpose of the spouse or child must be to join or accompany the principal R–1 alien in the United States. USCIS may limit, deny or revoke on notice any stay for an R–2 that is not primarily intended for this purpose or is intended to evade the normal requirements of the nonimmigrant classification that otherwise would apply when the principal alien is absent from the United States.

(5) *Jurisdiction and procedures for obtaining R–1 status.* A petitioner seeking to classify an alien as a religious worker, by initial petition or by change of status, shall file a petition on Form I–129, Petition for a Nonimmigrant Worker, along with the R Classification Supplement containing the attestation, the fee specified in 8 CFR 103.7(b)(1), and supporting evidence, at the appropriate USCIS service center. The Form I–129, Petition for a Nonimmigrant Worker, must be submitted by the employer in the United States seeking to employ the religious worker.

(6) *Attestation.* The Form I–129, Petition for a Nonimmigrant Worker, contains an attestation section in the R Classification Supplement, which the authorized official of the prospective employer must complete, sign and date. The term ''prospective employer'' refers to the organization or institution where the alien will be performing the proffered duties. The attestation includes a statement which certifies under penalty of perjury that the contents of the attestation are true and correct to the best of his or her knowledge. This attestation must be submitted by the prospective employer along with the petition. In the Form I–129 R Classification Supplement, the prospective employer must specifically attest to the following:

(i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) The number of members of the prospective employer's organization, the number and positions (with brief descriptions) of employees in the prospective employer's organization, the number of aliens holding R visa status currently employed or employed within the past five years by the prospective employer's organization, and the number of special immigrant religious worker and R visa petitions and applications filed by or on behalf of any aliens to be employed as ministers or religious workers for the prospective employer in the past five years;

(iii) The title of the position offered to the alien, the complete package of compensation being offered and a detailed description of the alien's proposed daily duties;

(iv) That the position that the alien is being offered requires at least 20 hours per week of compensated service;

(v) The specific location(s) of the proposed employment and that the alien is otherwise qualified for the position offered;

(vi) That the alien has been a member of the denomination for at least 2 years;

(vii) That, if the position is not a religious vocation, the alien will not be engaged in secular employment, and any compensation for religious work will be paid to the alien by the attesting employer,

(viii) That the prospective employer has the ability and intention to compensate and otherwise support (through housing, for example) the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization; and

(ix) That the petitioner will notify USCIS of any changes to the alien's employment and reapply by filing a new Form I–129 on behalf of the alien within 60 days of the occurrence of any change.

(7) *Evidence relating to the petitioning organization.* The petitioner must submit the following initial evidence relating to the petitioning organization:

(i) A currently valid determination letter from the Internal Revenue Service (IRS) showing that the organization is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, as a religious organization; or

(ii) For religious organizations that are recognized as tax exempt under a group tax exemption, a currently valid determination letter from the IRS establishing that the group is an organization as described in sections 509(a)(1) of the Internal Revenue Code of 1986 or subsequent amendment, and that the group's tax exemption is in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, as a religious organization; or

(iii) For a bona fide organization which is affiliated with the religious denomination, if the organization was granted a section 501(c)(3) exemption as something other than a religious organization:

(A) A currently valid determination letter from the IRS showing that the organization is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, (not necessarily as a religious organization),

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization,

(C) Organizational literature, such as brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization, and

(D) A Religious Denomination Certification. The Form I–129 contains a ''Religious Denomination Certification'' section which the petitioner must have the attesting religious organization complete, sign and date. The ''Religious Denomination Certification'' includes a statement certifying under penalty of perjury that the petitioning organization is affiliated with the religious denomination. The certification must be submitted by the petitioner along with the petition and attestation.

(E) A currently valid determination IRS letter evidencing that the attesting organization is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, as a religious organization.

(8) *Evidence relating to the qualifications of a minister.* If the alien is a minister, the petitioner must submit as initial evidence a copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological

education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation which establishes that the theological education is accredited by the denomination. For denominations that do not require a prescribed theological education, the petitioner must submit evidence of the denomination's requirements for ordination to minister, evidence of the duties allowed to be performed by virtue of ordination, evidence of the denomination's gradations of ordination, if any, and evidence of the alien's completion of the denomination's requirements for ordination.

(9) *Change or addition of employers; employer obligations.* An alien admitted in the R–1 classification shall engage only in employment that is consistent with the approved petition, the attestation contained in the supplement and supporting documents submitted to USCIS. A different or additional employer seeking to employ the alien must obtain prior approval of such employment through the filing of an additional Form I–129, Petition for a Nonimmigrant Worker, with the R Classification Supplement, supporting documents and the appropriate fee. Any compensated work for an unauthorized religious organization will constitute a failure to maintain status within the meaning of section 237(a)(1)(C)(i) of the Act. When an alien who has obtained R–1 classification is working less than the required number of hours or has been released from or has otherwise terminated employment before the expiration of a period of authorized R–1 stay, the employer through whom R–1 classification has been obtained must notify DHS within 7 days of such release or termination, using reporting procedures set forth in the instructions to Form I–129, Petition for a Nonimmigrant Worker, which can be found on the USCIS Internet Web site at *http://www.uscis.gov.*

(10) *Evidence of previous R–1 employment.* Any request for R–1 status, admission beyond the first year of R–1 status, or any period of extension of stay, must include initial evidence of the previous R–1 employment in the form of the alien's W–2 wage statements, the employer's wage transmittal statements, and transcripts of the alien's processed income tax returns for any preceding period spent in the United States in R–1 status. For any period of such employment not yet reflected in the documents such as W–2s, wage transmittal statements or income tax returns required to be completed or filed at the time of filing the petition, then pay stubs relating to payment for such employment shall be presented for work not yet reflected in such documents. Aliens who have taken a vow of poverty or similar formal lifetime commitment to a religious way of life may submit evidence of such commitment in lieu of the above documentary requirements, but must also submit evidence of all financial support (including stipends, room and board, or other support) received while in R–1 status.

(11) *Nonimmigrant intent.* The filing or approval of a permanent labor certification or the filing of a preference petition for an alien shall not be a basis for denying an R petition, a request to extend such a petition, or the alien's application for admission, change of status, or extension of stay. The alien may legitimately come to the United States for a temporary period as an R nonimmigrant and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the United States.

(12) *Audits, inspections, assessment, verification, spot checks, and site visits.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

* * * * *

PART 299—IMMIGRANT FORMS

5. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103; 8 CFR part 2.

6. Section 299.1 is amended in the table by revising the entries for Forms ''I–129'' and ''I–360'', to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
* *	*	* * * * *
I–129	XX–XX–XX	Petition for a Nonimmigrant Worker.
* *	*	* * * * *
I–360	XX–XX–XX	Petition for Amerasian Widow(er) or Special Immigrant.
* *	*	* * * * *

7. Section 299.5 is amended in the table, by revising the entries for Forms ''I–129'' and ''I–360'', to read as follows:

§ 299.5 Display of control numbers.

* * * * *

Form No.	Form title	Currently assigned OMB control No.
* * * * * * *		
I–129	Petition for a Nonimmigrant Worker	1615–0009
* * * * * * *		
I–360	Petition for Amerasian Widow(er) or Special Immigrant	1615–0020
* * * * * * *		

Dated: April 16, 2007.

Michael Chertoff,

Secretary.

[FR Doc. E7–7743 Filed 4–24–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AB07

Fee and Expense Disclosures to Participants in Individual Account Plans

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Request for information.

SUMMARY: The Department of Labor is currently reviewing the rules under the Employee Retirement Income Security Act (ERISA) applicable to the disclosure of plan administrative and investment-related fee and expense information to participants and beneficiaries in participant-directed individual account plans (e.g., 401(k) plans). The purpose of this review is to determine to what extent rules should be adopted or modified, or other actions should be taken, to ensure that participants and beneficiaries have the information they need to make informed decisions about the management of their individual accounts and the investment of their retirement savings. The purpose of this notice is to solicit views, suggestions and comments from plan participants, plan sponsors, plan service providers and members of the financial community, as well as the general public, on this important issue.

DATES: Written or electronic responses should be submitted to the Department of Labor on or before July 24, 2007.

ADDRESSES: *Responses:* To facilitate the receipt and processing of responses, EBSA encourages interested persons to submit their responses electronically by e-mail to *e-ORI@dol.gov*, or by using the Federal eRulemaking portal at *http://www.regulations.gov* (follow instructions for submission of comments). Persons submitting responses electronically are encouraged not to submit paper copies. Persons interested in submitting written responses on paper should send or deliver their responses (preferably, at least three copies) to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210, Attention: Fee Disclosure RFI. All written responses will be available to the public, without charge, online at *http://www.regulations.gov* and *http://www.dol.gov/ebsa*, and at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Katherine D. Lewis, Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5669, U.S. Department of Labor, Washington, DC 20210, telephone (202) 693–8510. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

According to the Department's most recent data, an estimated 41 million participants in 401(k) plans are permitted to direct the investment of all or a portion of their plan accounts. While contributions and earnings increase retirement savings in 401(k) and other participant-directed plans, fees and expenses charged to participant accounts can substantially reduce that growth. For this reason, it is important that plan participants, particularly those responsible for making their own investment decisions, consider what and how fees and expenses are charged to their individual accounts.

In general, the purpose of this Request for Information (RFI) is to obtain, from the perspective of plan participants, plan sponsors and plan service providers, information concerning: (1) What administrative and investment-related fee and expense information participants should consider; (2) the manner in which that information should be provided or made available to participants; and, (3) who should be responsible for providing the information. Responses to this RFI will be used to assist the Department in determining to what extent rules should be developed or modified, or other courses of action pursued, to improve the information currently available to participants and beneficiaries relating to administrative and investment-related fees and expenses, recognizing that in many instances participants may have to bear the cost of disclosing such information.

In considering the questions set forth in the RFI, commenters are encouraged to take into consideration the following initiatives.

Section 404(c) Regulation

In 1992, the Department adopted a final regulation under section 404(c) of ERISA.[1] In general, the regulation sets forth the conditions under which participants are considered to be exercising control over the assets in their accounts, thereby relieving fiduciaries from liability for the results of participants' investment decisions. Among other matters, the regulation, at § 2550.404c–1(b)(2)(i)(B), conditions relief upon participants and beneficiaries being provided and having access to specific information concerning their plan and the investment options offered thereunder. In framing the disclosure requirements, the Department attempted to strike a balance between what it believed participants needed to make informed investment decisions and the burdens

[1] See Final Regulation Regarding Participant Directed Individual Account Plans (ERISA Section 404(c) Plans), 57 FR 46,906 (Oct.13, 1992) (codified at 29 CFR § 2550.404c–1). This regulation may be accessed at *www.dol.gov/dol/allcfr/title_29/Part_2550/29CFR2550.404c-1.htm.*

and costs to participants and plan sponsors resulting from a broader disclosure mandate. There have been a number of changes since 1992 in what and how information is communicated to plan participants and investors generally. For this reason, this RFI seeks information on what changes, if any, should be made to the section 404(c) regulation. An example of one such change is the use of summary or profile prospectuses by mutual funds as a means by which to communicate basic information to investors. The use of profile prospectuses as a permissible means by which to communicate to participant-investors for purposes of compliance with the section 404(c) requirements was addressed in Advisory Opinion 2003–11A.[2]

To facilitate consideration of the section 404(c) disclosure requirements, the applicable provisions of section 2550.404c–1(b)(2)(i) are set forth below in relevant part:

(B) The participant or beneficiary is provided or has the opportunity to obtain sufficient information to make informed decisions with regard to investment alternatives available under the plan, and incidents of ownership appurtenant to such investments. For purposes of this subparagraph, a participant or beneficiary will not be considered to have sufficient investment information unless—

(1) The participant or beneficiary is provided by an identified plan fiduciary (or a person or persons designated by the plan fiduciary to act on his behalf):

* * * * *

(ii) A description of the investment alternatives available under the plan and, with respect to each designated investment alternative, a general description of the investment objectives and risk and return characteristics of each such alternative, including information relating to the type and diversification of assets comprising the portfolio of the designed investment alternative;

* * * * *

(v) A description of any transaction fees and expenses which affect the participant's or beneficiary's account balance in connection with purchases or sales of interests in investment alternatives (e.g., commissions, sales load, deferred sales charges, redemption or exchange fees);

(vi) The name, address, and phone number of the plan fiduciary (and, if applicable, the person or persons designated by the plan fiduciary to act on his behalf) responsible for providing the information described in paragraph (b)(2)(i)(B)(2) upon request of a participant or beneficiary and a description of the information described in paragraph (b)(2)(i)(B)(2) which may be obtained on request;

* * * * *

(viii) In the case of an investment alternative which is subject to the Securities Act of 1933, and in which the participant or beneficiary has no assets invested, immediately following the participant's or beneficiary's initial investment, a copy of the most recent prospectus provided to the plan. This condition will be deemed satisfied if the participant or beneficiary has been provided with a copy of such most recent prospectus immediately prior to the participant's or beneficiary's initial investment in such alternative;

(ix) Subsequent to an investment in a investment alternative, any materials provided to the plan relating to the exercise of voting, tender or similar rights which are incidental to the holding in the account of the participant or beneficiary of an ownership interest in such alternative to the extent that such rights are passed through to participants and beneficiaries under the terms of the plan, as well as a description of or reference to plan provisions relating to the exercise of voting, tender or similar rights.

(2) The participant or beneficiary is provided by the identified plan fiduciary (or a person or persons designated by the plan fiduciary to act on his behalf), either directly or upon request, the following information, which shall be based on the latest information available to the plan:

(i) A description of the annual operating expenses of each designated investment alternative (e.g., investment management fees, administrative fees, transaction costs) which reduce the rate of return to participants and beneficiaries, and the aggregate amount of such expenses expressed as a percentage of average net assets of the designated investment alternative;

(ii) Copies of any prospectuses, financial statements and reports, and of any other materials relating to the investment alternatives available under the plan, to the extent such information is provided to the plan;

(iii) A list of the assets comprising the portfolio of each designated investment alternative which constitute plan assets within the meaning of 29 CFR 2510.3–101, the value of each such asset (or the proportion of the investment alternative which it comprises), and, with respect to each such asset which is a fixed rate investment contract issued by a bank, savings and loan association or insurance company, the name of the issuer of the contract, the term of the contract and the rate of return on the contract;

(iv) Information concerning the value of shares or units in designated investment alternatives available to participants and beneficiaries under the plan, as well as the past and current investment performance of such alternatives, determined, net of expenses, on a reasonable and consistent basis; and

(v) Information concerning the value of shares or units in designated investment alternatives held in the account of the participant or beneficiary.

Advisory Council Report

In 2004, the Advisory Council on Employee Welfare and Pension Benefit Plans' Working Group on Fee and Related Disclosures to Participants reviewed the current disclosure requirements applicable to participant-directed individual account plans. Their review sought to assess the adequacy and usefulness of such requirements and to determine whether changes to the requirements would help participants more effectively manage their retirement savings. Focusing on the requirements applicable to section 404(c) plans, the working group issued a report containing a consensus recommendation, which is summarized below:

The working group recognizes that providing actual fee information for a particular participant's account over a stated period of time is not justified at this time by the cost of providing that information. Given the current state of technology and recordkeeping practices, it is a complex and costly procedure to sum the total costs to a particular participant's account because of investment changes over time. Nonetheless, the working group saw examples of investment statements showing the expense of each investment option expressed as a ratio for each fund in which a participant was invested as of the date of the statement. The working group believes that this is pertinent information that is helpful in making the investment decision. This information can also be presented in an understandable format.

With regard to the section 404(c) regulation, the consensus of the working group, recognizing that different considerations apply to open platform (also known as open brokerage) options in plans, made the following recommendations:

The profile prospectus of each investment option should be delivered to each employee upon eligibility to participate. For those options not subject to the prospectus requirements, the working group recommended that the Department should require a disclosure with information substantially similar to the information on the profile prospectus. Providing this information prior to the initial investment decision should eliminate the need to automatically provide a full prospectus or other information concerning the particular investment options elected immediately after the investment options are elected. A participant would still be able to request such materials.

Participants must be given materials (like a glossary) that explain the meaning of the terms used in the profile prospectus (or other like document) coincident with the delivery of the profile prospectus. This explanation would include a description of an expense ratio and what it means to have the investment expenses of an investment option expressed as a ratio. Included in this would be a mathematical example demonstrating the calculation necessary to approximately determine the expenses that apply to a

[2] This advisory opinion may be accessed at *www.dol.gov/ebsa/regs/aos/ao2003-11a.html* (September 8, 2003).

particular participant's account investments as of a particular date.

Account and investment recordkeepers should be encouraged to develop internet Web sites where participants can research information about plan investment options and review information about their own investment choices. Additionally, these recordkeepers should be encouraged to develop web-based tools for participants to calculate alternative investment scenarios that incorporate assumptions about investment expenses as well as rates of return. Nonetheless, it is not intended that the suggestions in this paragraph be made into requirements.

To the extent that an annual statement is provided by the recordkeeper, the statement must provide the expenses of each investment option expressed as a ratio along with other information provided about the investment options. There must also be an identification of the investment expenses that are paid entirely or in part by the plan sponsor. The investment expenses do not include other expenses for general plan maintenance paid by the plan sponsor, including, but not limited to, legal expenses, consulting expenses and accounting expenses. If such investment expenses were paid in part by the plan sponsor, the portion so paid would be identified.

Any new requirement implemented under this item 3 [annual statement recommendation] should have a delayed effective date as applied to small and medium sized plans, based on the number of participants. New requirements like those described in this item [annual statement recommendation] could be more costly to implement for such plans than for large plans. Defining what a small to medium size plan is for these purposes should err on the high side. Perhaps plans covering fewer than 500 participants would come within this classification. Delaying the application would likely allow service providers time to design necessary systems to provide the contemplated disclosures in a cost effective manner for such sponsors.

The Department should provide a sample model disclosure format that is available on its Web site. This would be a helpful addition to existing tools already provided on its Web site for understanding expenses both from the perspective of a participant and a plan sponsor.

Commenters are encouraged to consider the report and recommendations of the working group in reviewing the issues identified in this RFI. This report may be accessed at *www.dol.gov/ebsa/publications/AC_111704_report.html.*

GAO Report

In November 2006, the Government Accountability Office (GAO) published Report GAO–07–21 entitled ''Private Pensions: Changes Needed to Provide 401(k) Plan Participants and the Department of Labor Better Information on Fees.'' This report recommends that, in order to better enable the Department to effectively oversee 401(k) plan fees, the Secretary of Labor should require plan sponsors to report a summary of all fees that are paid out of plan assets or by participants. The summary should list fees by type, particularly investment fees indirectly incurred by participants.

Commenters are encouraged to consider the report and recommendations of the GAO in reviewing the issues identified in this RFI, including the GAO's specific recommendation relating to fee disclosure. The GAO report referenced above may be accessed at *www.gao.gov/htext/d0721.html.*

B. Issues Under Consideration

The purpose of this notice is to solicit views, suggestions and comments from plan participants, plan sponsors, plan service providers and members of the financial community, as well as the general public, as to what extent rules should be adopted or modified, or other action taken, to ensure that participants and beneficiaries have the information they need to make informed decisions about the management of their individual accounts and the investment of their retirement savings. To facilitate consideration of the issues, the Department has set forth below a number of matters with respect to which views, suggestions, comments and information are requested. Interested persons, however, are encouraged to address any other matters they believe to be germane to the Department's consideration of fee and expense disclosure issues.

Request for Information

Disclosure of Information Relating to Plan Investment Options

1. What basic information do participants need to evaluate investment options under their plans? If that information varies depending on the nature or type of investment option (options offered by a registered investment company, options offered under a group annuity contract, life cycle fund, stable value product, etc.), please include an explanation.

2. What specific information do participants need to evaluate the fees and expenses (such as investment management and 12b–1 fees, surrender charges, market value adjustments, etc.) attendant to investment options under their plans? If that information varies depending on the nature or type of option, or the particular fee arrangement relating to options (e.g., bundled service arrangements), please include an explanation.

3. To what extent is the information participants need to evaluate investment options and the attendant fees and expenses not currently being furnished or made available to them? Should such information be required to be furnished or made available by regulation or otherwise? Who should be responsible for furnishing or making available such information? What, if any, additional burdens and/or costs would be imposed on plan sponsors or plans (plan participants) for such disclosures?

4. Should there be a requirement that information relating to investment options under a plan (including the attendant fees and expenses) be provided to participants in a summary and/or uniform fashion? Such a requirement might provide that: A) all investment options available under a participant-directed individual account plan must disclose information to participants in a form similar to the profile prospectus utilized by registered investment companies; or B) plan fiduciaries must prepare a summary of all fees paid out of plan assets directly or indirectly by participants and/or prepare annually a single document setting forth the expense ratios of all investment options under the plan.[3] Who should be responsible for preparing such documents? Who should bear the cost of preparing such documents? What are the burden/cost implications for plans of making any recommended changes?

5. How is information concerning investment options, including information relating to investment fees and expenses, communicated to plan participants, and how often? Does the information or the frequency with which the information is furnished depend on whether the plan is intended to be a section 404(c) plan?

6. How does the availability of information on the internet pertaining to specific plan investment options, including information relating to investment fees and expenses, affect the need to furnish information to participants in paper form or electronically?

7. What changes, if any, should be made to the section 404(c) regulation, to improve the information required to be furnished or made available to plan participants and beneficiaries, and/or to improve likelihood of compliance with the disclosure or other requirements of the section 404(c) regulation? What are the burden/cost implications for plans of making any recommended changes?

[3] See recommendations of the GAO as set forth Report GAO–07–21 (November, 2006), *www.gao.gov/htext/d0721.html.*

8. To what extent should participant-directed individual account plans be required to provide or promote investment education for participants? For example, should plans be required or encouraged to provide a primer or glossary of investment-related terms relevant to a plan's investment options (e.g., basis point, expense ratio, benchmark, redemption fee, deferred sales charge); a copy of the Department's booklet entitled ''A Look at 401(k) Fees'' (*www.dol.gov/ebsa/publications/401k_employee.html*) or similar publication; or investment research services? Should such a publication include an explanation of other investment concepts such as risk and return characteristics of available investment options? Please explain views, addressing costs and other issues relevant to adopting such a requirement.

Disclosure of Information Relating to Plan and Individual Account Administrative Fees and Expenses

9. What information is currently furnished to participants about the plan and/or individual administrative expenses charged to their individual account? Such expenses may include, for example: audit fees, legal fees, trustee fees, recordkeeping expenses, individual participant transaction fees, participant loan fees or expenses.

10. What information about administrative expenses would help plan participants, but is not currently disclosed? Please explain the nature and usefulness of such information.

11. How are charges against an individual account for administrative expenses typically communicated to participants? Is such information included as part of a participant's individual account statement or furnished separately? If separately, is the information communicated via paper statements, electronically, or via website access?

12. How frequently is information concerning administrative expenses charged to a participant's account communicated?

13. What, if any, requirements should the Department impose to improve the disclosure of administrative expenses to plan participants? Please be specific as to any recommendation and include estimates of any new compliance costs that may be imposed on plans or plan sponsors.

14. Should charges for administrative expenses be disclosed as part of the periodic benefit statement required under ERISA section 105?

General Questions

15. What, if any, distinctions should be considered in assessing the informational needs of participants in plans that intend to meet the requirements of section 404(c) as contrasted with those of participants in plans that do not intend to meet the requirements of section 404(c)?

16. What (and what portion of) plan administrative and investment-related fees and expenses typically are paid by sponsors of participant-directed individual account plans? How and when is such information typically communicated to participants?

17. How would providing additional fee and expense information to participants affect the choices or conduct of plan sponsors and administrators, and/or that of vendors of plan products and services? Please explain any such effects.

18. How would providing additional fee and expense information to participants affect their plan investment choices, plan savings conduct or other plan related behavior? Please explain any such effects and provide specific examples, if available.

19. Please identify any particularly cost-efficient (high-value but inexpensive) fee and expense disclosures to participants, and to the contrary any particularly cost-inefficient ones. Please provide any available estimates of the dollar costs or benefits of such disclosures.

Signed at Washington, DC, this 20th day of April 2007.

Bradford P. Campbell,

Acting Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. E7–7884 Filed 4–24–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Marine Corps Restricted Area and Danger Zone, Neuse River and Tributaries, Marine Corps Air Station Cherry Point, NC

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing to amend its regulations to designate an existing rifle range fan as a danger zone. The military exercise area is located within the Rifle Range of Marine Corps Air Station Cherry Point, North Carolina, along the Neuse River. The danger zone will only be activated by the Marine Corps Air Station Cherry Point during range operational hours. The Marine Corps will advise residents in the vicinity of the range fan thus ensuring their safety by alerting them to temporary potential hazardous conditions which may exist as a result of small arms exercises. There will be no change in the use of the existing exercise area. The area, however, needs to be marked on navigation charts to insure security and safety for the public. Entry points into the danger zone will be prominently marked with signage indicating the boundary of the danger zone. The placement of aids to navigation and regulatory markers will be installed in accordance with the requirements of the United States Coast Guard. If the proposed signage exceeds nationwide permit and/or regional general permit conditions, the Commander, United States Marine Corps, Marine Corps Air Station Cherry Point, North Carolina will seek additional Department of the Army authorizations.

DATES: Written comments must be submitted on or before May 25, 2007.

ADDRESSES: You may submit comments, identified by docket number COE–2007–0011, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil. Include the docket number, COE–2007–0011, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, *ATTN:* CECW–CO (David B. Olson), 441 G Street, NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2007–0011. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The

http://www.regulations.gov Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov*. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Consideration will be given to all comments received within 30 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at (202) 761–4922, Mr. Scott Jones, Corps of Engineers, Wilmington District, Regulatory Branch, at (252) 975–1616, or Ms. Tracey Wheeler, Corps of Engineers, Wilmington District, Regulatory Branch, at (252) 975–1616.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps proposes to amend 33 CFR 334.430 by adding a danger zone along the Neuse River as described below. The regulations governing the restricted area are not proposed to be changed.

Procedural Requirements

a. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). Unless information is obtained to the contrary during the public notice comment period, the Corps expects that the establishment of this danger zone would have practically no economic impact on the public, result in no anticipated navigational hazard, or interfere with existing waterway traffic. This proposed rule, if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered. The environmental assessment may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty on the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.430 is revised to read as follows:

§ 334.430 Neuse River and tributaries at Marine Corps Air Station Cherry Point, North Carolina; restricted area and danger zone.

(a) *The restricted area.* That portion of Neuse River within 500 feet of the shore along the reservation of the Marine Corps Air Station, Cherry Point, North Carolina, extending from the mouth of Hancock Creek to a point approximately 6,800 feet west of the mouth of Slocum Creek, and all waters of Hancock and Slocum Creeks and their tributaries within the boundaries of the reservation.

(b) *The danger zone.* The waters within an area beginning at latitude 34.923425° N, longitude—76.853222° W; thence northeasterly across Hancock Creek to latitude 34.925258° N, longitude—76.849864° W; continuing northeasterly to latitude 34.933382° N, longitude—76.835081° W; thence northwesterly to the Neuse River shoreline at latitude 34.936986° N, longitude—76.841197° W, continuing northwesterly to latitude 34.943275° N, longitude—76.852169° W; thence southwesterly along the shorelines to latitude 34.935111° N, longitude—76.859078° W; thence southeasterly along Hancock Creek shoreline to the point of origin.

(c) *The regulations.* (1) Except in cases of extreme emergency, all persons or vessels, other than those vessels operated by the U.S. Navy or Coast Guard, are prohibited from entering the restricted area or danger zone without prior permission of the enforcing agency.

(2) Entry points into the danger zone will be prominently marked with signage indicating the boundary of the danger zone.

(3) Firing will take place both day and night at irregular periods throughout the year. Appropriate warnings will be issued through official government and civilian channels serving the region. Such warnings will specify the time and duration of operations and give such other pertinent information as may be required in the interest of safety. Upon completion of firing or if the scheduled firing is cancelled for any reason, the warning signals marking the danger zone will be removed.

(4) Except as otherwise provided in this section, the danger zone will be open to general public access. Vessels, watercraft, and other vehicles may proceed through the danger zone.

(5) The regulations in this section shall be enforced by the Commanding Officer, Marine Corps Air Station Cherry Point, North Carolina, and/or persons or agencies as he/she may designate.

Lawrence A. Lang,

Acting Chief, Operations Directorate of Civil Works.

[FR Doc. E7–7901 Filed 4–24–07; 8:45 am]

BILLING CODE 3710–92–P

POSTAL SERVICE

39 CFR Part 111

Revised Standards for Mailing Sharps Waste and Other Regulated Medical Waste

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service™ is proposing to revise the mailing standards for medical waste so that medical professionals can more easily use the mail to ship waste to disposal sites. For over 15 years we have safely permitted approved vendors to use the mail for return of sharps and other regulated medical waste for disposal.

Under our current standards, mail-back medical waste containers are most often used by individuals who self-inject medications to control diseases such as diabetes and arthritis. By increasing the maximum allowable weight of medical waste mail-back containers and at the same time requiring additional packaging safeguards, we intend to provide small medical offices the option of using the mail for sending medical waste for disposal. This proposal would allow medical professionals a safe, easy, and cost-effective means of disposing of sharps and other regulated medical waste.

DATES: We must receive your comments on or before May 25, 2007.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, Postal Service, 475 L'Enfant Plaza SW., Room 3436, Washington, DC 20260–3436. You may inspect and photocopy all written comments at the Postal Service Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor N, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bert Olsen, 202–268–7276.

SUPPLEMENTARY INFORMATION: This proposal would increase the use of the mail for shipping medical waste while improving packaging requirements so that these items continue to be safe while transported in the mail. Currently, mailing standards require that primary sharps receptacles not exceed 3 gallons and that primary receptacles for other regulated medical waste not exceed 5 gallons. This proposal would allow for a single larger primary receptacle that could accommodate several pre-primary sharps receptacles (sharps receptacles normally used in doctors' offices) as well as several tie-closed bags of other regulated medical waste. This change would add additional receptacles (pre-primary) to the currently required triple-packaging system and therefore would increase protection of the contents.

The pre-primary receptacles may be different in size and design. The primary receptacle that holds the pre-primary receptacles and the bags of other regulated medical waste must be capable of passing all current package tests. The new standards would set the total mailpiece weight limit to 35 pounds for packages approved as ''Medical Professional Packaging.'' All other medical waste mailpieces would be required to conform to the current 25-pound weight limit.

Although we are exempt from the notice and comment requirements of the *Administrative Procedure Act* [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comment on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001; chapter 36 of Title 39: Pub. L. No 109–435, 120 Stat. 3198 (2006).

2. Revise the following sections of the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

* * * * *

600 Basic Standards for All Mailing Services

601 Mailability

* * * * *

10.0 Hazardous Materials

* * * * *

10.17 Infectious Substances (Hazard Class 6, Division 6.2)

* * * * *

10.17.6 Sharps Waste and Other Mailable Regulated Medical Waste

* * * * *

[Add a new second sentence to item b5 as follows:]

* * * Except for Medical Professional Packages as identified in 10.17.6c, which may not weigh more than 35 pounds.* * *

* * * * *

[Renumber items 6c through 6f as new 6d through 6g. Add new item 6c as follows:]

c. Medical Professional Packaging. One primary receptacle larger than 5 gallons in volume may be used for mailing pre-primary sharps receptacles (sharps receptacles normally used in doctors' offices) and other regulated medical waste under the following conditions:

1. The mailpiece must meet all the requirements in 10.17.6, except for the primary receptacle capacity limits in 10.17.6b1.

2. Only rigid, securely closed, puncture- and leak-resistant pre-primary sharps receptacles that meet or exceed Occupational Safety and Health Administration standards may be placed inside the primary receptacle. Each pre-primary sharps container may contain no more than 50 ml (1.66 ounces) of residual waste liquid. Several pre-primary sharps receptacles may be enclosed in the single primary receptacle.

3. Multiple tie-closed plastic bags of regulated medical waste may be placed inside the single primary receptacle.

4. The primary receptacle must be lined with a plastic bag at least 4 mil in thickness and include sufficient absorbent material within the liner to absorb all residual liquid in the primary receptacle.

5. The mailpiece must not weigh more than 35 pounds.

* * * * *

[Renumber items d1 through d7 as new d2 through d8. Add new number d1 as follows:]

1. For Medical Professional Packages, the additional marking, ''Medical Professional Packaging,'' must be clearly printed in lettering at least 2 inches high on the address side of the outer shipping container.

* * * * *

[Add two new sentences to the introductory text renumbered item f as follows:]

f. *Testing Criteria.* Packages tested for approval as Medical Professional

Packaging containers may not be tested using pre-primary containers that are currently or have previously been approved as USPS primary containers. In addition, test reports must identify by brand name the pre-primary containers that were used during testing.* * * * * * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if our proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E7–7816 Filed 4–24–07; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Revised Standards for Mailing Lithium Batteries

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to revise our mailing standards for lithium batteries. Currently, our standards limit customers and battery manufacturers from using the mail to send consumer-type lithium batteries, and prohibit the mailing of devices powered by lithium batteries when the batteries are in the device.

These standards are excessively restrictive because they obstruct the mailing of commonly used consumer-type batteries that are permitted to be transported by air under Department of Transportation (DOT) and International Air Transportation Association (IATA) regulations. In addition, under our current standards, it is difficult to determine which lithium batteries meet mailing standards and which do not. Therefore, by identifying all small consumer-type lithium batteries as mailable when properly labeled and packaged, this proposal would increase the safety of the mail. Our proposed standards are based on, yet more restrictive than, DOT shipping regulations for lithium batteries.

DATES: We must receive your comments on or before May 25, 2007.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, Postal Service, 475 L'Enfant Plaza, SW., Room 3436, Washington, DC 20260–3436. You may inspect and photocopy all written comments at Postal Service Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bert Olsen, 202–268–7276.

SUPPLEMENTARY INFORMATION: Current mailing standards are inconsistent with Department of Transportation (DOT) regulations and prohibit most lithium batteries from being mailed via air transportation services—Express Mail, First-Class Mail, or Priority Mail—even though commercial air carriers currently carry these items under DOT regulations. This proposal would allow the Postal Service to accept lithium batteries and battery-powered devices for mailing in a manner similar to that of other commercial shippers. Commercial shippers follow DOT and International Air Transportation Association (IATA) regulations, which generally allow lithium batteries containing up to 8 grams of equivalent lithium content, while we accept only batteries having no more than 0.5 grams of equivalent lithium content. Many small consumer-type batteries contain more than 0.5 grams of equivalent lithium content.

In addition, our standards prohibit acceptance of devices that have the batteries installed in them, while DOT and IATA regulations permit shipment of electronic devices when small consumer-type batteries are installed. DOT regulations suggest that the device itself offers protection of the batteries, and batteries contained in equipment are less likely to externally short-circuit.

Consumer devices such as personal digital assistants, cameras, flashlights, laptop computers, cell phones, handheld electronic games, and portable media players such as iPods and MP3 players contain lithium batteries. Many popular consumer products now contain lithium batteries, and some batteries cannot be easily removed from the device they power, and some batteries easily exceed our allowable equivalent lithium content requirement. Therefore, we propose to adopt mailing standards that are in line with industry standards and that are more easily understood and complied with by mailers.

Our proposed revision is more restrictive than the shipping regulations required by DOT and IATA in the following ways:

- We would impose a 5-pound weight limit on mailpieces containing primary lithium batteries.
- We would impose a 10-pound weight limit on mailpieces containing secondary lithium batteries and a limit of no more than 3 batteries per mailpiece.
- We would require all primary and secondary lithium batteries to be of the type proven (by testing) to be nondangerous in accordance with *UN Manual of Tests and Criteria.*
- We would require all mailpieces containing lithium batteries to be marked on the outside to identify the contents.

Our proposal mirrors DOT and IATA allowable gram quantity limits for small consumer-type lithium batteries. Devices containing batteries must be packaged in such a way as to prevent activation while they are in the mailstream. Lithium batteries other than small consumer-type batteries remain nonmailable.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comment on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

We provide the proposed mailing standards below. We propose to implement these standards on June 1, 2007.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

600 Basic Standards for All Mailing Services

601 Mailability

* * * * *

601.10 Hazardous Materials

* * * * *

10.20 Miscellaneous Hazardous Materials (Hazard Class 9)

* * * * *

[Add new 10.20.5 to read as follows:]

10.20.5 Primary Lithium (Non-Rechargeable) Cells and Batteries

Small consumer-type primary lithium cells or batteries (lithium metal or lithium alloy) like those used to power cameras and flashlights are mailable

with the following restrictions: Each cell must contain no more than 1.0 gram (g) of lithium content per cell. Each battery must contain no more than 2.0 g aggregate lithium content per battery. Additionally, each cell or battery must meet the requirements of each test in the *UN Manual of Tests and Criteria*, part III, and subsection 38.3 as referenced in DOT's hazardous materials regulation at 49 CFR 171.7. All primary lithium cells and batteries must be mailed within a firmly sealed package separated and cushioned to prevent short circuit, movement, or damage. Except for batteries installed in equipment, they must be in a strong outer package. All outer packages must have a complete delivery and return address. Primary lithium cells and batteries are mailable as follows:

a. Via surface transportation when the cells or batteries (not packed with or installed in equipment) are ''in the original retail packaging.'' They are forbidden aboard passenger aircraft. The outside of the package must be marked on the address side ''Surface Mail Only, Primary Lithium Batteries—Forbidden for Transportation Aboard Passenger Aircraft.''

b. Via surface or air transportation when the cells or batteries are properly packed with or properly installed in the equipment they operate and the mailpiece has no more than the number of batteries needed to operate the device. Cells or batteries properly installed in the device they operate must be protected from damage and short circuit, and the device must be equipped with an effective means of preventing accidental activation. The outside of the package must be marked on the address side ''Package Contains Primary Lithium Batteries.''

c. The mailpiece must not exceed 5 pounds.

[Add new 10.20.6 to read as follows:]

10.20.6 Secondary Lithium-Ion (Rechargeable) Cells and Batteries

Small consumer-type lithium-ion cells and batteries like those used to power cell phones and laptop computers are mailable with the following restrictions: Each cell must contain no more than 1.5 g of equivalent lithium content per cell. Each battery must contain no more than 8.0 g aggregate quantity of equivalent lithium content per battery. Additionally, each cell or battery must meet the requirements of each test in the *UN Manual of Tests and Criteria*, Part III, and subsection 38.3 as referenced in the DOT's hazardous materials regulation at 49 CFR 171.7. All secondary lithium-ion cells and batteries must be mailed in a firmly sealed package separated and cushioned to prevent short circuit, movement, or damage. Except for batteries installed in equipment, they must be in a strong outer package. All outer packages must have a complete delivery and return address. These cells and batteries are mailable as follows:

a. Via surface or air transportation when individual cells or batteries are mailed or when properly packed with or properly installed in the equipment they operate and the mailpiece has no more than the number of batteries needed to operate the device. Cells or batteries properly installed in the device they operate must be protected from damage and short circuit, and the device must be equipped with an effective means of preventing accidental activation. The outside of the package must be marked on the address side ''Package Contains Lithium-ion Batteries (no lithium metal).''

b. The mailpiece must not contain more than 3 batteries or exceed 10 pounds.

[Add new 10.20.7 to read as follows:]

10.20.7 Damaged or Recalled Batteries

Damaged or recalled batteries are prohibited from mailing unless approved by the manager, Mailing Standards.

[Add new Exhibit 10.20.7 as follows:]

Exhibit 10.20.7 Lithium Battery Mailability Chart

Primary lithium batteries (small non-rechargeable consumer-type batteries)	Surface transportation	Air transportation	Mailpiece weight limit (lb)	International APO/FPO
Without the equipment they operate (individual batteries)	Mailable	Prohibited	5	Prohibited.
Packed with equipment but not installed in equipment	Mailable	Mailable	5	Mailable.
Contained (properly installed) in equipment	Mailable	Mailable	5	Mailable.

Note 1: Each primary cell must not contain more than 1g lithium content.

Note 2: Each primary battery must not contain more than 2 g lithium content.

Secondary lithium batteries (small rechargeable consumer-type batteries)	Surface transportation	Air transportation	Mailpiece weight limit and battery limit	International APO/FPO
Without the equipment they operate (individual batteries).	Mailable	Mailable	10 lb (no more than 3 batteries)	Mailable.
Packed with equipment but not installed in equipment.	Mailable	Mailable	10 lb (no more than 3 batteries)	Mailable.
Contained (properly installed) in equipment.	Mailable	Mailable	10 lb (no more than 3 batteries)	Mailable.

Note 3: Each secondary cell must not contain more than 1.5 g equivalent lithium content.

Note 4: Each secondary battery must not contain more than 8 g equivalent lithium content.

Note 5: In addition to the 10 pound weight limit for secondary batteries, there is a limit of 3 batteries.

* * * * *

11.0 Other Restricted and Nonmailable Matter

* * * * *

11.17 Battery-Powered Devices

[Revise the first sentence in 11.17 to read as follows:]

Cells or batteries properly installed in equipment must be protected from damage and short circuit, and equipment containing cells or batteries must be equipped with an effective

means of preventing accidental activation. * * *

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if our proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E7–7817 Filed 4–24–07; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 60, 62, 63, 72, 78, 96, and 97

[EPA–HQ–OAR–2007–0012; FRL–8302–4]

RIN 2060–A033

Revisions to Definition of Cogeneration Unit in Clean Air Interstate Rule (CAIR), CAIR Federal Implementation Plan, Clean Air Mercury Rule (CAMR), and CAMR Proposed Federal Plan; Revision to National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters; and Technical Corrections to CAIR and Acid Rain Program Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In 2005, EPA finalized the Clean Air Interstate Rule (CAIR) to address emissions of nitrogen oxides (NO_X) and sulfur dioxide (SO_2) and the Clean Air Mercury Rule (CAMR) to establish standards of performance for mercury (Hg) for coal-fired electric utility steam generating units. Both CAIR and CAMR include model cap-and-trade rules that states may adopt to meet the applicable requirements. In 2006, EPA finalized the Federal Implementation Plan (FIP) for CAIR and also proposed a Federal Plan for CAMR. All four rules include an exemption for certain cogeneration units. To qualify for this exemption, a unit must, among other things, meet an efficiency standard included in the cogeneration unit definition. Today, in light of information concerning existing biomass-fired cogeneration units that may not qualify for the exemption, EPA is proposing a change in the cogeneration unit definition in CAIR, the CAIR model cap-and-trade rules, the CAIR FIP, CAMR, and the CAMR model cap-and-trade rule, and the proposed CAMR Federal Plan. Specifically, EPA is proposing to revise the efficiency standard in the cogeneration unit definition so that the standard would apply, with regard to certain units, only to the fossil fuel portion of a unit's energy input. This change to the CAIR model cap-and-trade rules, CAIR FIP, CAMR, and proposed CAMR Federal Plan would likely make it possible for some additional units to qualify for the cogeneration unit exemption in these rules. Because it would only affect a small number of relatively low emitting units, this would have little effect on the projected emissions reductions and the environmental benefits of these rules. EPA is also considering revisions to the definition of ''total energy input,'' a term used in the efficiency standard. This action also proposes minor technical corrections to CAIR and the Acid Rain Program rules. Finally, this action proposes minor revisions to National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters (''boiler MACT'').

DATES: *Comments*. Comments must be received on or before June 11, 2007. If requested by May 7, 2007, a public hearing will be held on May 10, 2007 in Washington, DC. For additional information on a public hearing, *see* the **SUPPLEMENTARY INFORMATION** section of this preamble.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–HQ–OAR–2007–0012, by one of the following methods:

A. *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail: A-AND-R-Docket@epa.gov*

C. *Mail:* Air Docket, ATTN: Docket Number EPA–HQ–OAR–2007–0012, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

D. *Hand Delivery:* EPA Docket Center, 1301 Constitution Avenue, NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0012. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, and any form of encryption, and should be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed changes, contact Elyse Steiner, Program Development Branch, Clean Air Markets Division (MC 6204J), EPA, Washington, DC 20460; telephone number (202) 343–9141; fax number (202) 343–2359; electronic mail address: *Steiner.elyse@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include the following:

Category	NAICS code [1]	Examples of potentially regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal government	[2] 221122	Fossil fuel-fired electric utility steam generating units owned by the Federal government.
State/local/Tribal government	[2] 221122	Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150	Fossil fuel-fired electric utility steam generating units in Indian country.

[1] North American Industry Classification System.
[2] Federal, State, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists examples of the types of entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether a facility is regulated, carefully examine the applicability provisions and definitions in CAIR, the CAIR FIP, CAMR, and the proposed CAMR Federal Plan.[1] All references related to applicability and definitions for these rules have been provided in a single list only once and will not be referenced again in this proposal to avoid unnecessary repetition.

As discussed below, the pulp and paper industry raised concerns regarding whether biomass-fired cogeneration units could meet the definition of ''cogeneration unit''. The following table identifies NAICS codes for entities in the pulp and paper industry. This table is not intended to be exhaustive, but rather the table may help identify entities potentially affected by today's action, although today's action may affect entities in other industries in addition to pulp and paper.

Category	NAICS code [1]	Examples of potentially regulated entities
Industry	22	Utilities.
	322	Paper Manufacturing Facilities.
	32213	Paperboard Mills.
	322122	Newsprint Mills.

[1] North American Industry Classification System.

If you have questions regarding the applicability of this action to a particular entity, consult your EPA Regional Office or EPA's Clean Air Markets Division.

Worldwide Web. In addition to being available in the docket, an electronic copy of this action will also be available on the Worldwide Web through EPA's Office of Air and Radiation. Following signature by the Administrator, a copy of this action will be posted on the CAIR and CAMR pages at *http://www.epa.gov/cair or http://www.epa.gov/camr*.

Public Hearing. If requested, EPA will hold a public hearing on today's proposed rule. EPA will hold a hearing only if a party notifies EPA by May 7, 2007, expressing its interest in presenting oral testimony on issues addressed in today's proposed rule. Any person may request a hearing by calling Elyse Steiner at (202) 343–9141 before 5 p.m. on May 7, 2007. If a public hearing is held on today's notice, it will be held on May 10, 2007. Any person who plans to attend the hearing should visit the EPA's Web site at *http://www.epa.gov/cair* or *http://www.epa.gov/camr* or contact Elyse Steiner at (202) 343–9141 to learn if a hearing will be held, the location, and time that the hearing is scheduled to take place. Because the hearing will be held at a U.S. Government facility, everyone planning to attend should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room.

The hearing, if held, will be limited to the subject matter of this document. Each commenter's oral testimony will be limited to 5 minutes. EPA encourages commenters to provide written versions of their oral testimonies either electronically (on computer disk or CD ROM) or in paper copy. The public hearing schedule, including the list of speakers, will be posted on EPA's Web site at *http://www.epa.gov/cair* or *http://www.epa.gov/camr*. Verbatim transcripts and written statements will be included in the rulemaking docket.

A public hearing would provide interested parties the opportunity to present data, views, or arguments concerning issues addressed in today's notice. EPA may ask clarifying questions during the oral presentations, but would not respond to the presentations or comments at that time.

Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at a public hearing.

Outline. The information presented in this preamble is organized as follows:

[1] All applicability provisions and definitions can be found in the CFR or FR in the following locations: for *CAIR and the CAIR model cap-and-trade rules, 40 CFR* 51.123, 51.124, 96.102, 96.104, 96.202, 96.204, 96.302, and 96.304; for the *CAIR FIP, 40 CFR* 97.102, 97.104, 97.202, 97.204, 97.302, and 97.304; for CAMR and the CAMR model cap-and-trade rule, *40 CFR* 60.24(h)(8), 60.4102, and 60.4104; and for the proposed *CAMR Federal Plan, Proposed* § 62.15902 and § 62.15904.

I. Background

A. Summary of This Proposed Action

In this rule, EPA is proposing to revise the definition of the term ''cogeneration unit'' in CAIR, the CAIR model cap-and-trade rules, the CAIR FIP, CAMR and CAMR Hg model cap-and-trade rule, and the proposed CAMR Federal Plan. The CAIR model cap-and-trade rules and the CAIR FIP apply to large fossil-fuel fired electric generating units with certain exceptions.[2] The CAMR, CAMR Hg model cap-and-trade rule, and proposed CAMR Federal Plan address large coal-fired electric generating units with certain exceptions.[3] The CAIR model cap-and-trade rules, CAIR FIP, CAMR and CAMR Hg model cap-and-trade rule, and proposed CAMR Federal Plan all provide an exemption for cogeneration units meeting certain requirements concerning their level of electricity sales. All four rules provide that in order to qualify for this exemption, a unit must, among other things, meet the definition of cogeneration unit in the rule. In all four rules, a unit cannot meet the definition unless it meets a specified efficiency standard, i.e., the useful power plus one-half of useful thermal energy output of the unit must equal no less than a certain percentage of the total energy input or, in some cases, useful power must be no less than a certain percentage of total energy input. If a unit meets the definition of cogeneration unit including the efficiency standard, then the unit may qualify for the exemption in these rules depending on whether it meets additional criteria concerning the amount of electricity sales from the unit. The efficiency standard is applied to all energy input to the unit regardless of fuel type. The criteria for qualifying as a cogeneration unit are discussed in more detail below.

On August 4, 2006 EPA published a Notice of Data Availability for EGU NO_X Annual and NO_X Ozone Season Allocations for the Clean Air Interstate Rule Federal Implementation Plan Trading Programs (CAIR FIP NODA) (71 FR 44283). During the period for submitting objections concerning the CAIR FIP NODA, EPA received information concerning the application of the efficiency standard in the cogeneration unit definition (as defined in the CAIR FIP) to biomass-fired cogeneration units and a request to extend the period for objections. Subsequently, EPA extended the period for objections—only for objections related to biomass cogeneration units—to February 20, 2007 (72 FR 965). The period had previously been extended to October 5, 2006 for all objections and further extended to January 3, 2007 for objections concerning biomass cogeneration units. Certain biomass cogeneration unit owners and operators requested additional time to submit objections because of difficulties collecting information relating to the application of efficiency standards for cogeneration units (as defined in the CAIR FIP) to biomass cogeneration units.

EPA is treating the information that the Agency received concerning the application of the efficiency standard in the cogeneration unit definition to biomass-fired cogeneration units as a request for rulemaking to change the efficiency standard in the cogeneration unit definition and, in light of that information, is proposing today to revise the efficiency standard in the cogeneration unit definition in the CAIR model cap-and-trade rules, the CAIR FIP, CAMR, and the CAMR model cap-and-trade rule, and the proposed CAMR Federal Plan, so that, in some cases, energy input from only fossil fuel would be included in the efficiency calculation. The proposed revised cogeneration unit definition is discussed in more detail in section II of today's preamble, below.

The category of units addressed by today's proposal (existing biomass cogeneration units, as discussed further below) was brought to our attention by the pulp and paper industry. EPA requests comment on whether existing biomass cogeneration units in other identifiable industries, or cogeneration units burning other identifiable types of non-fossil fuels besides biomass, may have characteristics similar to those of existing biomass cogeneration units in the pulp and paper industry and would also be impacted by the proposed rule change.

As discussed below, in today's action, EPA is requesting comment only on the efficiency standard in the cogeneration unit definition as applied to biomass cogeneration units and related definitions, on the definition of ''total energy input'' related to the efficiency standard as applied to all cogeneration units, on the minor technical corrections to CAIR and the Acid Rain Program Regulations, and on the minor revisions to the boiler MACT. We are not requesting or accepting comments on other parts of CAIR, the CAIR model trading rules, the CAIR FIP, CAMR, the CAMR model trading rule, or the CAMR Federal Plan proposal or reopening any issues decided in those actions for reconsideration or comment.

As discussed further in section II of today's preamble, EPA estimated the total amount of NO_X, SO_2, and Hg emitted from units that might be affected by the proposed change to the cogeneration unit definition (i.e., units that may not be able to meet the efficiency standard as written and that are likely to be able to meet the standard if changed as proposed) and found the estimated emissions for this group of units to be very small compared to the size of the overall emission caps in CAIR and CAMR.

This action also proposes minor technical corrections to CAIR and the Acid Rain Program rules. Finally, this action proposes minor revisions to National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters (''boiler MACT'').

B. Background on CAIR, the CAIR FIP, CAMR, and the Proposed CAMR Federal Plan

CAIR and the CAIR FIP

On May 12, 2005, EPA published CAIR as a final rule entitled, ''Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain

[2] CAIR provides States flexibility in choosing a mechanism for achieving the required NO_X and SO_2 emission reductions, including flexibility to choose which sources to control. CAIR includes model trading rules for regionwide, EPA-administered NO_X and SO_2 emissions cap-and-trade programs, covering certain fossil-fuel-fired electric generating units, which States may choose to adopt in order to achieve the required reductions. If a State chooses to adopt the EPA-administered trading programs then it must control electric generating units, as defined in CAIR, and use the same applicability criteria as provided in the model cap-and-trade rules. The applicability criteria in the CAIR FIP are the same as in the model cap-and-trade rules.

[3] CAMR provides States flexibility in choosing a mechanism for ensuring that mercury emissions do not exceed the State's allocated mercury emissions budget. All necessary reductions must, however, be from coal-fired electric generating units as defined in CAMR. CAMR includes a nationwide, EPA-administered Hg emissions cap-and-trade program, covering coal-fired electric generating units, which States may choose to adopt in order to achieve the required reductions. States may also choose an alternative approach so long as it ensures that the State mercury emissions budget is not exceeded. EPA proposes the same applicability requirements for the CAMR Federal Plan as set forth in CAMR.

Program; Revisions to NO_X SIP Call'' (70 FR 25162). CAIR requires reductions of NO_X and/or SO_2 emissions that contribute significantly to nonattainment and maintenance problems in downwind States with respect to the national ambient air quality standards for fine particulate matter ($PM_{2.5}$) and 8-hour ozone to be made across 28 eastern States and the District of Columbia. The reductions are required in two phases. The first phase of NO_X reductions starts in 2009 (covering 2009–2014) and the first phase of SO_2 reductions starts in 2010 (covering 2010–2014); the second phase of reductions for both NO_X and SO_2 starts in 2015 (covering 2015 and thereafter).

States must develop State Implementation Plans (SIPs) to achieve the emission reductions required by CAIR and have flexibility to determine what measures to adopt to achieve the necessary reductions and which sources to control. One option is to control certain electric generating units. In CAIR, EPA provided model SO_2 and NO_X cap-and-trade programs, covering fossil-fuel-fired electric generating units that States can choose to adopt to meet the emission reduction requirements in a flexible and highly cost-effective manner.

On April 28, 2006, EPA published the FIP for CAIR as part of a final rule entitled, ''Rulemaking on Section 126 Petition From North Carolina to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Clean Air Interstate Rule; Revisions to the Acid Rain Program'' (71 FR 25328). The CAIR FIP was promulgated for all 28 States and the District of Columbia covered by CAIR and will ensure that the required emission reductions are achieved on schedule. As the control strategy for the FIP, EPA adopted the model SO_2 and NO_X cap-and-trade programs for electric generating units that EPA provided in CAIR as a control option for States, with minor changes to account for Federal, rather than State, implementation. EPA intends to withdraw the FIP for any State in coordination with approval of that State's SIP that meets the CAIR requirements.

CAMR and the Proposed CAMR Federal Plan

On May 18, 2005, EPA published the CAMR as a final rule entitled ''Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units; Final Rule'' (70 FR 28606). CAMR established standards of performance for mercury for new and existing coal-fired electric generating units and requires mercury reductions nationwide. The reductions are required in two phases. The first phase starts in 2010 (covering 2010–2017); the second phase starts in 2018 (covering 2018 and thereafter).

States must develop State Plans to achieve the mercury emission reductions required by CAMR and have flexibility to determine what measures to adopt to achieve the necessary reductions. Unlike CAIR, under which States may choose which sources to control, CAMR requires that States control mercury emissions from coal-fired electric generating units. In CAMR, EPA provided a model Hg cap-and-trade program covering coal-fired electric generating units that States can choose to adopt to meet the emission reduction requirements.

On December 22, 2006, EPA published a proposed Federal Plan for CAMR in a proposed rule entitled, ''Revisions of Standards of Performance for New and Existing Stationary Sources; Electric Utility Steam Generating Units; Federal Plan Requirements for Clean Air Mercury Rule; and Revisions of Acid Rain Program Rules'' (71 FR 77100). The CAMR Federal Plan was proposed to implement the standards of performance for coal-fired electric generating units located in all States, the District of Columbia, and Indian Country covered by CAMR (*see* 40 CFR 60.24(h)(1) listing the jurisdictions covered by CAMR) to ensure that the required emission reductions are achieved on schedule. As the control strategy for the Federal Plan, EPA proposed to adopt the model Hg cap-and-trade program for coal-fired electric generating units that EPA provided in CAMR as a control option for States, with minor changes to account for Federal, rather than State, implementation. EPA will not adopt the Federal Plan for any State with a timely submitted and approved State Plan that meets the CAMR requirements. EPA will withdraw the Federal Plan for any State after the Agency approves a State Plan that meets the CAMR requirements for that State. EPA will similarly withdraw the Federal Plan upon its approval of a Tribal Plan.

C. Applicability to Cogeneration Units

Applicability determinations under the CAIR model cap-and-trade rules, the CAIR FIP, CAMR and the proposed CAMR Federal Plan all turn, in part, on whether a unit meets the definition of ''electric generating unit'' in the rule. The CAIR model cap-and-trade rules and the CAIR FIP use a definition of ''electric generating unit'' that covers certain fossil-fuel-fired units while CAMR and the proposed CAMR Federal Plan use a similar definition that covers certain coal-fired units.

The CAIR model cap-and-trade rules and the CAIR FIP apply to large fossil-fuel fired electric generating units with certain exceptions. The CAMR and the proposed CAMR Federal Plan apply to large coal-fired electric generating units with certain exceptions. The CAIR model cap-and-trade rules, CAIR FIP, CAMR and proposed CAMR Federal Plan all provide that certain units meeting the definition of a ''cogeneration unit'' may be excluded from the definition of ''electric generating unit'' and therefore exempt from the requirements of the rule (These rule provisions are commonly referred to as the cogeneration unit exemption). The cogeneration unit exemption is effectively the same under all of these rules. In order to fall within the definition of cogeneration unit under these rules, a unit must meet a specified efficiency standard, i.e., the useful power plus one-half of useful thermal energy output of the unit must equal no less than a certain percentage of the total energy input or, in some cases, useful power must be no less than a certain percentage of total energy input. If a unit meets the definition of cogeneration unit including the efficiency standard, then it may qualify for the cogeneration unit exemption in these rules depending on whether it meets additional criteria concerning the amount of electricity sales from the unit. The efficiency standard in the cogeneration unit definition is applied to all energy input to the unit regardless of fuel type.

In order to qualify for the cogeneration unit exemption in these rules, the cogeneration unit must meet the following electricity sales criteria: A cogeneration unit qualifies for the exemption if the unit supplies in any calendar year no more than ⅓ of its potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

CAIR and the CAIR FIP

With certain exceptions, the CAIR model cap-and-trade rules and the CAIR FIP cover any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

Similarly, CAIR refers to such units as electric generating units.

CAIR, the CAIR model cap-and-trade rules, and the CAIR FIP define ''cogeneration unit'' as a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity—

(i) For a topping-cycle cogeneration unit,[4]

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle cogeneration unit,[5] useful power not less than 45 percent of total energy input.

CAMR and the Proposed CAMR Federal Plan

With certain exceptions, CAMR defines electric generating unit (EGU) as a stationary, coal-fired boiler or stationary, coal-fired combustion turbine in the State serving at any time, since the later of November 15, 1990 or the start-up of a unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale. An Hg Budget unit is an EGU that is subject to the requirements of the CAMR Hg Budget Trading Program under a State Plan approved by the Administrator as consistent with EPA's model Hg trading rule or under the proposed CAMR Federal Plan.

The definition of ''cogeneration unit'' in CAMR, the CAMR model cap-and-trade rule, and the proposed CAMR Federal Plan is identical to the cogeneration unit definition in CAIR, the CAIR model cap-and-trade rules, and the CAIR FIP, except that the definition in the CAMR and related rules refers to stationary, coal-fired boilers or stationary, coal-fired combustion turbines where the definition in the CAIR-related rules refers to stationary, fossil-fuel-fired boilers or stationary, fossil-fuel-fired combustion turbines.

If a unit meets the criteria concerning service of a generator (and so would otherwise be an electric generating unit) but qualifies as a cogeneration unit, then the unit may be excluded from the definition of electric generating unit in CAIR, or excluded from that definition and the regulatory requirements of the CAIR model cap-and-trade rules, the CAIR FIP, CAMR and the CAMR model cap-and-trade rule, and the proposed CAMR Federal Plan. In order to qualify for this exemption under these rules, the cogeneration unit must meet certain criteria concerning electricity sales from the unit. Specifically, as discussed above, a cogeneration unit qualifies for the exemption if the unit supplies in any calendar year no more than 1/3 of its potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

D. Reason for Proposing a Change for Cogeneration Units

The purpose of the efficiency standard in the cogeneration unit definition is to prevent a potential loophole where a unit might send only a nominal or insignificant amount of thermal energy to a process and not achieve significant efficiency gains through cogeneration, but still qualify as a cogeneration unit and potentially be excluded from the EGU definition, or from the applicability provisions, under the CAIR and CAMR and related rules.

During the period for submitting objections concerning the CAIR FIP NODA, EPA received information that suggested to EPA that the efficiency standard in the definition of cogeneration unit should be revised. The information concerns the application of the efficiency standard to biomass-fired cogeneration units and says that the existing rule ''unfairly penalizes co-generation units that burn significant amounts of biomass.'' The information indicates that many biomass cogeneration units may be unable to meet the efficiency standard because ''biomass, when burned as a fuel, has a lower thermal efficiency for conversion to steam than fossil fuels, such as coal, oil and natural gas.''

Previously, in developing CAIR, EPA indicated that it expected ''most back pressure units burning * * * biomass to meet the efficiency standard'' (*see* Technical Support Document (TSD) for CAIR on Cogeneration Unit Efficiency Calculations). The Agency believed at the time that most existing biomass cogeneration units would meet the efficiency standard, and thus would be potentially exempt cogeneration units. EPA now is re-examining whether the efficiency standard is appropriate for all biomass-fired cogeneration units.

EPA believes that the vast majority of existing biomass cogeneration units are operated by the pulp and paper industry.[6] The biomass fuels typically fired by pulp and paper units are wood-based biomass and black liquor.[7] Both biomass fuels have relatively high moisture content that prevents them from burning as efficiently as coal and other fossil fuels. The moisture content of these biomass fuels can range from approximately 40 to over 60 percent. In comparison, the moisture content of bituminous coal is relatively low, less than 10 percent. Higher moisture content requires that more of the heating value of the fuel goes into evaporating that moisture during combustion. The evaporated moisture (and the heat used to evaporate it) escapes up the stack—subtracting from the efficiency of the unit. Therefore, the higher the moisture content in the biomass and the higher the proportion of biomass fuel used, the more difficult it will be for a unit to meet the efficiency standard in the cogeneration unit definition. Conversely, the greater the amount of heat input from fossil fuels, the easier it is for a unit to meet the efficiency standard because of the reduced need for energy to heat and vaporize the moisture in the fuel.

Certain additional factors may also contribute to lower efficiencies for existing biomass cogeneration units in the pulp and paper industry. EPA believes that, as compared to large electric power plants that are optimized for power generation, many of the existing process-optimized units in the pulp and paper industry use significantly lower design steam pressure and temperature conditions at the steam turbine inlet. For example, a large power plant turbine might be

[4] Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

[5] Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

[6] The pulp and paper industry raised concerns regarding biomass cogeneration units during the period for objections to the CAIR FIP NODA.

[7] Black liquor is spent pulping liquor, a byproduct of a pulping process used to separate the wood fibers used in papermaking from lignin and other wood solids.

designed to use steam at 2,400 psig and 1,000 °F, whereas a turbine-generator in a pulp and paper plant might be using steam at conditions below 900 psig and 800 °F. These lower steam conditions reduce the efficiency of the overall cogeneration cycle, which was optimized for process needs, not for electric power generation. Moreover, many steam-turbine generators in the pulp and paper industry may have been installed by retrofit—a circumstance that may have exacerbated the problem because the boiler was designed before cogeneration by the unit was contemplated and thus before the impact of the design on thermal efficiency became a consideration.

In addition, existing biomass cogeneration units (boilers and steam turbines) in the pulp and paper industry generally are relatively small, and smaller units are typically less efficient than larger units. The existing smaller units generally do not incorporate high-efficiency design practices and their energy losses (such as radiation loss for a boiler and mechanical loss for a turbine-generator set) per unit of energy input are inherently higher. The combination of relatively high fuel moisture content and small boiler size results in efficiencies as low as 60 percent for the biomass boiler itself, compared to typical large fossil fuel-fired boiler efficiencies ranging to above 85 percent.

In summary, EPA believes that existing biomass cogeneration units as a group have a particular set of characteristics that together may make it difficult for many units to meet the efficiency standard in the cogeneration unit definition unless the units co-fire significant amounts of fossil fuel, such as coal. These characteristics are: Fuels with relatively high moisture content, units designed for relatively low pressure and temperature conditions for industrial processes, and relatively small boilers and steam turbines that are inherently less efficient due to their size. EPA recognizes that there are some existing biomass cogeneration units (e.g., those that co-fire coal, natural gas, or oil for a large portion of their heat input) that might be able to meet the efficiency standard, as discussed in the following section.

The cogeneration unit definition finalized in the CAIR model cap-and-trade rules, the CAIR FIP, CAMR, and in the proposed CAMR Federal Plan, includes all energy input in the efficiency calculation. EPA believes that the inclusion of energy input from all fuels—rather than from fossil fuels only—has the unanticipated and unintended consequence of making it very difficult for existing biomass cogeneration units to qualify as cogeneration units unless they co-fire significant amounts of fossil fuel, such as coal. Preventing these existing units from qualifying as cogeneration units is not consistent with the purposes of the efficiency standard. These units were originally designed to and still do produce significant amounts of useful thermal energy (relative to their total energy output) and achieve efficiency gains over non-cogeneration units. Under these circumstances, application of the currently written efficiency standard to existing biomass cogeneration units does not seem to promote the purposes of the standard. In addition, application of this standard as written has the paradoxical result that existing biomass cogeneration units burning greater amounts of coal (therefore likely having greater emissions) are much more likely to meet the efficiency requirement and thus qualify as cogeneration units exempt from emission limits under the CAIR model cap-and-trade programs and CAMR model cap-and-trade rule, while existing biomass cogeneration units burning less coal (therefore likely having lower emissions) are less likely to meet the requirement and qualify for the exemption.

For these reasons, EPA is proposing to revise the efficiency standard in the cogeneration unit definition such that energy input from only the fossil fuel portion of the input would be included in the efficiency calculation for existing units. The proposed change is discussed in more detail below.

II. EPA's Proposed Action and Its Impacts

A. Proposed Change for Cogeneration Units

EPA is proposing today to revise the efficiency standard in the cogeneration unit definition in CAIR, the CAIR model cap-and-trade rules, the CAIR FIP, CAMR and the CAMR model cap-and-trade rule, and the proposed CAMR Federal Plan, to permit existing boilers to include only energy input from fossil fuel in the efficiency calculation rather than energy input from all fuels. This change would make it more likely that existing units burning biomass and cogenerating electricity and useful thermal energy could meet the efficiency standard and qualify as exempt cogeneration units under these rules. EPA proposes to change the cogeneration unit efficiency standard for boilers but not for combustion turbines because combustion turbines generally do not fire biomass. The proposed methodology for determining thermal efficiency of a cogeneration unit under a revised efficiency standard is set forth in detail in the Technical Support Document (TSD) that accompanies this notice.

Further, EPA requests comment on whether the efficiency standard in the cogeneration unit definition should be revised to include language explaining how to calculate a unit's ''total energy input'' or alternatively, whether the definition of ''total energy input'' itself should be revised. As discussed in the TSD, EPA recognizes that there may be alternative formulas for calculating a unit's total energy input, which is a critical value in determining its efficiency under either the existing or any revised efficiency standard. EPA requests comment on the TSD, including the methodology for determining efficiency and the formula for calculating total energy input. EPA also asks for comments on whether to revise the efficiency standard or revise the definition of ''total energy input'' currently in CAIR, the CAIR model cap-and-trade rules, the CAIR FIP, CAMR and CAMR Hg model cap-and-trade rule, and the proposed CAMR Federal Plan in order to specify the formula that should be used to calculate a unit's total energy input.

EPA proposes to change the efficiency standard only for existing units because the Agency believes that units built in the future to cogenerate electricity and useful thermal energy (regardless of the percentage of heat input from biomass) can be designed to meet the efficiency standard as currently written. EPA proposes to change the efficiency standard only for units whose construction commenced on or before April 25, 2007 and units with equipment used in cogenerating where construction of such equipment commenced on or before April 25, 2007. If a unit that commenced construction on or before April 25, 2007 was not designed for cogeneration but is retrofitted for and commences cogeneration after that date, EPA proposes that such a unit be treated the same as a new cogeneration unit and so would be covered by the existing efficiency standard. EPA believes that with the proper planning and design decisions, these units are capable of operating more efficiently than those built before the efficiency standard became a consideration (i.e., on or before April 25, 2007). Retrofits can make use of available technology such as back pressure turbines that allow the unit to operate at higher efficiency, install equipment upgrades, and select adequate steam and temperature

conditions. Further, these units are likely to have higher utilization after they commence cogeneration because they will get higher returns on investments by running the units more to make electricity for use on site, purchasing less electricity and/or selling some electricity to the grid. The increased utilization likely will result in greater emissions. Therefore, they should either be covered by the requirements of the cap-and-trade programs or operate efficiently enough to qualify for the cogeneration unit exemption.

The Agency proposes a new definition for the term ''construction commenced'' (*see* proposed regulatory text at end of preamble). The proposed definition is based on, and essentially combines, the definitions of ''commenced'' and ''construction'' in 40 CFR 60.2 (Standards of Performance for New Stationary Sources). As an alternative, EPA requests comment on using, as a basis for the new definition, the definition of ''commence'' in 40 CFR 52.21(b)(9) (Prevention of Significant Deterioration of Air Quality) and the definition of ''construction'' in 40 CFR 60.2. While the definition of ''commenced'' in 40 CFR 60.2 requires that the owner or operator start or be contractually obligated to start and complete within a reasonable time a continuous program of construction, the definition of ''commence'' in 40 CFR 52.21 is narrower and, for example, requires either the start of on-site (e.g., not just off-site construction of equipment) or a contractual obligation that cannot be cancelled or modified without substantial loss to the owner or operator.

The proposed revision to the cogeneration unit definition would apply only to boilers where construction of the unit and of its cogeneration equipment commenced on or before the above-referenced cut-off date and would have the effect of applying the following definition to such boilers (*see* also proposed regulatory text):

Cogeneration unit means a stationary, fossil-fuel-fired boiler (for the CAIR model rules and the CAIR FIP) or stationary, coal-fired boiler (for CAMR and the proposed CAMR Federal Plan):

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity—

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input from fossil fuel, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input from fossil fuel, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input from fossil fuel.

This revised definition would not apply to boilers failing to meet the commence construction requirements. For such units the cogeneration unit definition—and the efficiency standard in particular—would remain as finalized in the CAIR model rules, the CAIR FIP and CAMR, and in the proposed CAMR Federal Plan.

Nor would the revised definition apply to combustion turbines. For combustion turbines (regardless of their commence construction dates) the cogeneration unit definition—and the efficiency standard in particular—would remain as finalized in the CAIR model rules, the CAIR FIP and CAMR, and in the proposed CAMR Federal Plan.

However, as discussed above, EPA is also requesting comment on revising the efficiency standard, or the definition of ''total energy input,'' to specify the formula for calculating a unit's total energy input. Any such revision would be applicable in determining the efficiency of all units under the cogeneration unit definition whether or not the units are biomass cogeneration units that would be covered by a limitation on the categories of fuel included in determining energy input.

Although EPA proposes to revise the cogeneration unit definition only for boilers where construction of the units and their cogeneration equipment commenced on or before April 25, 2007, the Agency requests comment on the choice of the cut-off date for the revised cogeneration unit definition, whether any specific, different cut-off date should be used, and whether the cogeneration unit definition should be revised for all units regardless of their commence construction dates. Additionally, EPA requests comment on not changing the cogeneration unit definition at all.

EPA also requests comment on an alternative proposal that would revise the efficiency standard in the cogeneration unit definition to specifically exclude heat input from biomass fuel, rather than revising the standard to include heat input from fossil fuel only. This alternative proposal would narrowly limit the exclusion of heat input to the non-fossil fuel (i.e., biomass) whose high moisture content, combined with the other factors discussed above (e.g., relatively low pressure and temperature unit design conditions and relatively small boilers and steam turbines), would be the basis for EPA's proposed exemption. The heat input from other non-fossil fuels (e.g., non-fossil-fuel process gases) that lack the same level of moisture and that may not be predominantly used in these types of units would not be excluded from the efficiency calculation. This would avoid expanding the cogeneration unit exemption to units that cogenerate but lack the unique combination of characteristics on which EPA proposes to base the exemption.

The efficiency calculation would be based on total energy input excluding input from biomass fuel. EPA requests comment on using the following definition of the term ''biomass'' in 26 U.S.C. 48B(c)(4), which was added to the Internal Revenue Code by Section 1307 of the Energy Policy Act of 2005 (Pub. L. 109–58), for purposes of the alternative proposed revision to the efficiency standard:

Biomass means:

(1) Any agricultural or plant waste;

(2) Any byproduct of wood or paper mill operations, including lignin in spent pulping liquors; and

(3) Any other products of forestry maintenance;

(4) Provided that the term 'Biomass' does not include paper that is commonly recycled.

The Agency also requests comment on whether a different definition of biomass should be used for this alternative proposal.

B. Emissions Impact of Proposed Action

EPA analyzed the emissions impact of this proposed action using the methodology explained below. For this analysis, EPA used Energy Information Administration (EIA) data because detailed EPA data was not available. Most units potentially affected by today's proposed rule change have not been required to report to EPA in the past under existing programs such as the Acid Rain Program or the NO_X SIP Call. While EPA has data about many of these sources as part of the National Emission Inventory (NEI), the NEI does not provide information at the unit level necessary to determine if units are

cogenerating or selling electricity to the grid. Therefore, NEI data is not sufficient to make estimates regarding which units might be affected by today's proposed rule change. We used EIA data to determine which units would potentially be affected and to estimate the potential impacts of the proposed change.

For the CAIR model rules and the CAIR FIP, we generated a list of biomass cogeneration units that serve generators with nameplate capacity greater than 25 MW in CAIR states. We assumed that all of these units could potentially be included in the CAIR and CAIR FIP trading programs because any biomass unit might use fossil fuel for start-up, combustion stabilization, or enhancement of electricity and steam production. From this list we removed units that reported to EIA that they do not have the ability to sell power to the grid; we assumed that these units would not be affected by the proposed revision to the cogeneration unit definition because they are not producing electricity for sale and would not be potentially included in the CAIR and CAIR FIP trading programs. We also removed from the list some units that reported having the ability to sell power to the grid; because their historical electricity sales data reported to EIA indicated sales above the threshold in the cogeneration unit definition [8] (i.e., more than ⅓ potential electric output capacity or 219,000 MWh supplied to a utility power generation system for sale), we assumed these units would not qualify for the cogeneration unit exemption even with the proposed revision of the cogeneration unit definition. For the remaining units on the list, based on fuel use data from EIA and assumed performance of the units with various fuels, we analyzed whether these units are likely to meet the efficiency standard in the cogeneration unit definition as currently written. We removed from the list any units that our analysis indicated are likely to meet the efficiency standard as written because their status under the CAIR model cap-and-trade rules or the CAIR FIP would not be affected by the proposed change.

After taking the above steps, the remaining units on the list are ones that may be affected by the proposed rule change, i.e., units that we assumed would not be exempt from state rules incorporating the CAIR model trading rules or the CAIR FIP trading programs as written, but that could become exempt if the proposed rule change is finalized as proposed. We estimated annual NO_X and SO_2 emissions from this remaining group of units. *See* Table II–1.

For CAMR and the proposed CAMR Federal Plan, using EIA data we generated a list of cogeneration units burning both coal and biomass that serve a generator with nameplate capacity greater than 25 MW in CAMR states, i.e., nationwide. Then we took the same steps as described above for the CAIR analysis, with the remaining units being ones that may be affected by the proposed rule change, i.e., units that we assumed would not be exempt from CAMR or the CAMR Federal Plan as written but may become exempt with the proposed rule change. We estimated annual Hg emissions from this remaining group of units. *See* Table II–1.

As shown in the table, emissions from units whose status under the CAIR model rules or the CAIR FIP may be affected by the proposed rule change are estimated to be on the order of 25,000 tons per year for both NO_X and SO_2. These emissions are quite small compared to the size of the regionwide emission caps under CAIR, which are 1.5 and 1.3 million tons of NO_X for the first and second phases of the annual NO_X program, respectively, and 3.7 and 2.6 million tons of SO_2 for the first and second phases of the SO_2, program, respectively (i.e., for NO_X, about 1.6 percent of the phase I cap and 1.9 percent of the phase II cap, and for SO_2 about 0.6 percent of the phase I cap and 0.9 percent of the phase II cap).[9]

Emissions from units whose status under CAMR or the proposed CAMR Federal Plan may be affected by the proposed rule change are estimated to be on the order of 0.02 tons of Hg per year. These emissions are very small compared to the size of the nationwide emission caps under CAMR which are 38 and 15 tons of Hg for the first and second phases, respectively (i.e., less than 0.1 percent of the phase I cap and about 0.1 percent of the phase II cap).

Another way to look at the magnitude of emissions represented by units that may be affected by the proposed rule change is to compare emissions from this group of units to emissions from biomass cogeneration units that we assumed are already exempt because they can meet the efficiency standard as currently written. Table II–2 shows estimated annual NO_X, SO_2, and Hg emissions for this group of units. (Note that this group excludes units that reported to EIA that they do not have the ability to sell power to the grid and units that reported the ability to sell power and whose historic sales exceed the electricity sales threshold for the exemption.) As shown in the table, the emissions from the group of units whose regulatory status we assumed would change under this proposed rule change are less than emissions from the group of biomass cogeneration units who we assumed are already exempt from these rules because they can meet the efficiency standard as currently written.

EPA's analysis also suggests that, on average, the estimated emissions per unit are lower from the group whose regulatory status we assumed would change compared to the group we assumed are already exempt from these rules because they can meet the efficiency standard. It is expected that emission rates at units burning proportionally more biomass—which is the group whose regulatory status we assumed would change—will generally be lower than emission rates at units burning less biomass.

It is important to note that EPA emissions estimates in Tables II–1 and II–2 are based on a rough estimate of the universe of units that might be affected by the proposed rule change. More detailed information for each unit is necessary in order to make a definitive determination as to whether the particular unit would be able to meet the efficiency standard as written or as proposed to be modified.

[8] Analysis of electricity sales data was based on two years of data, 1999 and 2000.

[9] Arkansas is included in CAIR for the ozone-season NO_X program only, not for the annual NO_X and SO_2 programs. Because these NO_X emission estimates include annual NO_X emissions for units in Arkansas, the estimates slightly overstate the potential impact of the proposed rule change for units in Arkansas.

TABLE II–1.—ESTIMATE OF BIOMASS COGENERATION UNITS POTENTIALLY EXCLUDED FROM CAIR AND CAMR BY PROPOSED RULE CHANGE AND ESTIMATE OF THEIR EMISSIONS

	CAIR NO_X	CAIR SO_2	CAMR Hg
Estimated number of units potentially affected by proposed rule change	55	46	6
Estimated annual emissions from units potentially affected by proposed rule change (tons)	24,200	23,800	0.02 (40 lbs)

TABLE II–2.—ESTIMATE OF BIOMASS COGENERATION UNITS ASSUMED EXCLUDED FROM CAIR AND CAMR AND ESTIMATE OF THEIR EMISSIONS

	CAIR NO_X	CAIR SO_2	CAMR Hg
Estimated number of units assumed to meet efficiency standard as written	31	28	30
Estimated annual emissions from units assumed to meet the efficiency standard as written (tons)	22,000	59,200	0.24 (480 lbs)

Finally, units that might become exempt cogeneration units if today's proposed rule changes are finalized may be required to make emission reductions under programs other than CAIR or CAMR. Federal requirements exist to protect areas of most concern, including Best Available Retrofit Technology (BART) requirements for sources in proximity to specially protected Class 1 areas. A review of available information indicates that the majority (about two-thirds) of the cogeneration units that may be affected by the proposed rule change may be required to install NO_X and SO_2 controls in response to BART requirements. It is also likely that biomass cogeneration units that co-fire coal that may become exempt units under today's proposed rule change will be required to comply with the boiler MACT requirements, which include mercury emission limits.

C. State Emissions Budgets

EPA does not propose to change the NO_X, SO_2, or Hg State emission budgets under CAIR and CAMR. As discussed above, the estimated amount of emissions from units potentially affected by today's proposed action is minimal compared to the size of the applicable regionwide (CAIR) and nationwide (CAMR) caps.

In addition, States have made significant progress toward the implementation of CAIR and CAMR based on the emission budgets that were established in those rules. Proposing and finalizing revised State emission budgets would take substantial effort by many States and EPA and considerably delay CAIR and CAMR implementation in order to make slight reductions in emissions caps. The CAIR emission budgets are in 40 CFR 51.123(e)(2) and (q)(2) and 51.124(e)(2) and CAMR emission budgets are in 40 CFR 60.24(h)(3). Discussion of development of the CAIR and CAMR State emission budgets are in 70 FR 25162 and 70 FR 28606, respectively.

The Agency also seeks comment on changing the budgets to reflect this change in the definition of cogeneration unit.

D. Impact of Proposed Action on CAIR and CAMR Implementation

The Agency recognizes that States have made significant progress toward the implementation of CAIR and CAMR and that finalizing this proposed change in the cogeneration unit definition and in the applicability provisions of the CAIR model rules and CAMR would require States to change CAIR SIPs and CAMR State Plans. If EPA finalizes today's proposed rule change, we will carefully consider the timing of the regulatory action in relation to the implementation timeline. The Agency understands that there may be implementation concerns regarding today's proposal and seeks comments on what those implementation concerns are. The Agency is particularly interested in comments regarding timing of this action in relation to implementation activities.

EPA realizes that some States may allocate allowances to cogeneration units that might be affected by today's proposal before the proposal is finalized. If the proposal is finalized, some such units may no longer be required to hold allowances. The Agency believes that this could be addressed by the State's SIP revision or State Plan. For example, the SIP revision or State Plan adopting revisions making some units exempt from the allowance-holding requirement could require the affected units to surrender their allocations for inclusion in the State's new unit set-aside. If the State would require the unit to surrender their allocations, the SIP revision or State Plan should indicate how allowances would be handled. Note that a State could also choose not to require the units to surrender allowances even though the units were no longer covered by the rule. A State has flexibility to choose how it allocates allowances, although the allocations must be consistent with the State's approved allocation methodology. EPA seeks comment on the potential impact of the revision of the cogeneration unit definition and the applicability provisions on the allowance allocation process.

EPA is also seeking comment on an alternative proposal whereby the Agency would modify the CAIR to allow States intending to join the EPA-administered CAIR trading programs to choose which cogeneration unit definition to use. The CAIR currently allows States to join the EPA-administered trading programs only if they adopt the model rules with limited modifications. Under this alternative proposal, EPA would change the cogeneration unit definition in the model trading rules, but allow States to join the EPA-administered trading programs even if they continued to use the existing cogeneration unit definition in the model trading rules. Thus, States could participate in the EPA-administered trading programs regardless of whether they choose to use the definition as currently written or any revised definition that may be finalized in this rulemaking. In the CAIR FIP, EPA would change the cogeneration unit definition as proposed today.

Under this alternative, a State that chose to use the cogeneration unit definition as currently written would not need to revise the definition in the State's CAIR SIP. This could lead to slightly different applicability provisions among the States. EPA recognizes that some States may have laws that prohibit the State from having

more stringent requirements than the requirements mandated by EPA (as discussed above, EPA believes that the proposed change would have only a slight impact on emissions). EPA seeks comment on whether this alternative would ease any implementation concerns. Although this alternative would provide an additional area of flexibility for States in the CAIR model cap-and-trade rules, EPA does not contemplate adding this flexibility to the abbreviated SIP revision option that was finalized in the CAIR FIP. If EPA changes the cogeneration unit definition in the CAIR FIP as proposed, States that chose to use an abbreviated SIP revision to allocate allowances under a FIP could modify their allocation method to accommodate the revised FIP cogeneration unit definition if they chose to do so.

EPA does not propose under this alternative that States could decide which definition of cogeneration unit to use for State Plans under CAMR, however, because CAMR specifies the category of units from which States must obtain emission reductions (coal-fired electric generating units as defined in the rule) in contrast to CAIR where States have flexibility in the choice of sources to control. The Agency seeks comment on whether this flexibility could or should be an alternative for CAMR State Plans. (In any case, EPA does not contemplate this alternative as an added flexibility for States to implement under the proposed CAMR Federal Plan.) Similar to States under the CAIR FIP, States may choose their allocation method for allowances under the CAMR proposed Federal Plan using a State allocation methodology.

III. Minor Corrections to CAIR and the Acid Rain Program Regulations and Minor Revisions to the Boiler MACT

A. CAIR and the Acid Rain Program Regulations

In addition to the above-described rule revisions, EPA is proposing certain minor corrections to CAIR, the CAIR model cap-and-trade rules, and the Acid Rain Program regulations. On April 28, 2006, EPA promulgated a final rule revising several definitions used in both the CAIR and in the CAIR model cap-and-trade rules. While the rule text in the April 28, 2006 final rule incorporated the revisions to the definitions in the CAIR model cap-and-trade rules, the final rule mistakenly did not also include rule text reflecting conforming changes to the definitions of the same terms in the CAIR, i.e., to the definitions for ''Allocation or allocation'', ''Combustion turbine'', ''Nameplate capacity'', and ''Maximum design heat input''. EPA proposes in today's action to implement these conforming changes in the definitions for these terms in § 51.123(cc) and (q) and § 51.124(q) for the reasons explained in that final action.

With regard to the CAIR model cap-and-trade rules, EPA is proposing a minor correction of the definition of ''Permitting authority''. For all States subject to CAIR, this term is intended to include the agencies authorized to issue CAIR permits under the regulations approved by the Administrator for the EPA-administered CAIR cap-and-trade programs. Some States have incorporated by reference, or intend to incorporate by reference, the permitting provisions of the CAIR model cap-and-trade rules. However, many other States have promulgated, or intend to promulgate, their own permitting provisions concerning the processing and issuing of CAIR permits under the EPA-administered cap-and-trade programs. The existing definition refers only to permitting authorities issuing CAIR permits under the permitting provisions of the CAIR model cap-and-trade rules and not to permitting authorities governed by States' own permitting provisions that may be approved into SIPs by the Administrator under CAIR. Today's proposed correction—i.e., the elimination of the references, in the current ''Permitting authority'' definition, to subparts CC, CCC, and CCCC of the CAIR model cap-and-trade rules—would correct this technical problem.

With regard to the Acid Rain Program regulations, EPA is today proposing minor corrections to two parts of the regulations. In Part 72, EPA is proposing a non-substantive correction in wording in the Certificate of Representation requirements so that the provision would have the same wording as comparable provisions in the CAIR model cap-and-trade rules. This would facilitate using a single Certificate of Representation form for all of these trading programs. In Part 78, EPA is proposing corrections that would make it clear that the administrative appeals procedures apply to all final actions of the Administrator under the EPA-administered cap-and-trade programs whether the programs are governed by the CAIR model cap-and-trade rule provisions that many States are incorporating by reference or whether the programs are governed by the State's own cap-and-trade rules approved by the Administrator.

B. Boiler MACT

EPA is also proposing in today's action a change to clarify the provision in the boiler MACT that explicitly excludes from that rule ''mercury budget units covered by 40 CFR part 60, subpart HHHH'' (40 CFR 63.7491(c)). EPA intended to exclude from the boiler MACT all units subject to CAMR (i.e., all electric generating units (EGU's) as defined in CAMR) and not just those units (i.e., Hg Budget units) that become subject to the EPA-administered Hg Budget Trading Program under 40 CFR part 60, subpart HHHH (*see* 71 FR 77109 explaining that EPA had amended the boiler MACT to exclude ''units subject to CAMR''). All EGUs under CAMR, whether covered by a State Plan that adopts the Hg Budget Trading Program or that adopts other controls that meet CAMR requirements, are subject to the State EGU Hg budgets established by CAMR. In excluding EGUs from the boiler MACT, EPA did not intend to distinguish among EGUs based on whether the State in which an EGU is located is participating in the Hg Budget Trading Program.

Under today's proposal, EGUs (i.e., Hg Budget units) in States participating in that program would continue to be excluded from the boiler MACT, and the regulatory language would be revised to include, in the exclusion, all EGUs covered by CAMR. In order to properly characterize all of the units that EPA originally intended to exclude, EPA proposes essentially to replace, in 40 CFR 63.7491(c), the term ''Mercury Budget Unit'' by the broader term ''Electric Generating Unit''.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review under the EO.

This action proposes relatively minor revisions to the definition of ''cogeneration unit'' in the CAIR model cap-and-trade rules, CAIR FIP, CAMR, including the CAMR model cap-and-trade rule, and the proposed CAMR Federal Plan. It also proposes some other minor, technical rule revisions to the CAIR, the Acid Rain Program, and the boiler MACT. For today's action, EPA is relying on the economic analysis conducted for CAIR, CAMR, and the boiler MACT that are presented in the Regulatory Impact Analyses for those actions.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action proposes relatively minor revisions to the definition of ''cogeneration unit'' in the CAIR model cap-and-trade rules, CAIR FIP, CAMR, including the model cap-and-trade rule, and the proposed CAMR Federal Plan. It also proposes some other minor, technical rule revisions to the CAIR, the Acid Rain Program, and the boiler MACT. The paperwork reduction requirements for this action are satisfied through the Information Collection Requests (ICRs) submitted to OMB for review and approval as part of CAIR, CAMR and the boiler MACT.

The OMB has previously approved the information collection requirements contained in the existing CAIR, CAMR, and boiler MACT regulations (70 FR 25313, May 12, 2005, 70 FR 28643, May 18, 2005, and 70 FR 55248 September 13, 2004, respectively) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* For the CAIR and CAMR ICRs, OMB has assigned control numbers 2060–0570 and 2060–0567, respectively (EPA No. 2152.02 and 2137.02). OMB also has previously approved the information collection requirements contained in the existing boiler MACT regulations and has assigned OMB control number 2060–0551 (EPA No. 2028.02). A copy of the OMB approved ICRs may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, EPA has determined that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if, among other possibilities, the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

EPA is proposing to revise the thermal efficiency standard in the cogeneration unit definition, which exists in the CAIR model trading rules, CAIR FIP, CAMR, including the CAMR model trading rule, and proposed CAMR Federal Plan. As a result, some additional cogeneration units will likely be exempt from the CAIR FIP, CAMR and the proposed CAMR Federal Plan. We have therefore concluded that the changes to the CAIR FIP, CAMR, including the CAMR model trading rule, and the proposed CAMR Federal Plan in today's proposed rule will not have any significant adverse impact on small entities and may relieve regulatory burden on some small entities that would have been subject to these programs in the absence of today's proposed rule change.

CAIR and the CAIR model trading rules do not establish requirements applicable to small entities and thus a regulatory flexibility analysis is not required for the revisions to the CAIR model trading rules. CAIR requires States to submit SIP revisions to achieve the necessary emission reductions and provides model trading rules that the States may adopt to achieve these reductions. However, because States have the discretion under CAIR to choose the sources to regulate and the emissions reductions to be achieved by the regulated sources, EPA cannot predict the effect of the change to the definition in the CAIR model rules on small entities. In States that choose to adopt the model rules with the modified definition of cogeneration unit, the likely result would be the exemption of some additional cogeneration units from the EPA-administered CAIR cap-and-trade programs.

With regard to CAMR, the change to the cogeneration definition is likely to result in some additional cogeneration units becoming exempt from CAMR, as well as from the EPA-administered CAMR cap-and-trade program, including potentially some small entities. Because the change is likely to relieve regulatory burden, the change will not have a significant economic impact on a substantial number of small entities.

The proposed technical changes to the boiler MACT clarify that any EGU subject to CAMR (whether or not the EGU is in a State that is participating in the EPA-administered Hg cap-and-trade program) is excluded from the boiler MACT. This change will not have any significant adverse impact on small entities and may relieve regulatory burden on some small entities that would have been subject to the boiler MACT in the absence of today's proposed rule change.

The other proposed rule revisions would not make any substantive changes in the requirements of the existing rules and, therefore, would not have any potential impacts on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA section 202, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that ''includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year.'' A ''Federal mandate'' is defined under UMRA section 421(6), 2 U.S.C. 658(6), to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate.'' A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments,'' except for, among other things, a duty that is ''a condition of Federal assistance'' (UMRA section 421(5)(A)(i)(I), 2 U.S.C. 658(5)(A)(i)). A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions (UMRA section 421(7)(A), 2 U.S.C. 658(7)(A)).

Before promulgating an EPA rule for which a written statement is needed under UMRA section 202, UMRA section 205, 2 U.S.C. 1535, generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

EPA prepared a written statement meeting the requirements of section 202 of UMRA for the final CAIR and CAMR and boiler MACT rulemaking processes. Most of the changes proposed in today's action relate to the definition of cogeneration unit, which results in a minor change in the applicability criteria for the CAIR model trading rules, CAIR FIP, CAMR, including the CAMR model trading rule, and the proposed CAMR Federal Plan that will not significantly alter the impacts of these rules. The technical change proposed for the boiler MACT in today's action relates to the exclusion of EGUs and makes that exclusion consistent with the intended scope of the boiler MACT. The other proposed rule changes would make no substantive changes in the requirements of the existing rules. Thus, the analyses already prepared for CAIR, CAMR, and the boiler MACT are applicable to today's action.

In summary, today's rule contains no Federal mandates for State, local, or tribal governments or the private sector because this action is likely to actually relieve regulatory burden by making more units eligible for the cogeneration unit exemption. Furthermore, as EPA stated in the final CAIR and CAMR, EPA is not directly establishing any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. Thus, EPA is not obligated to develop under UMRA section 203 a small government agency plan. Furthermore, in a manner consistent with the intergovernmental consultation provisions of UMRA section 204, EPA carried out consultations with the governmental entities affected by this rule.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the EO to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, EO 13132 does not apply to this proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' This proposal does not have ''Tribal implications'' as specified in EO 13175. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, entitled ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that (1) is determined to be ''economically significant'' as defined under EO 12866 and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5–501 of the EO directs the Agency to evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This proposed rule would result in little change in emissions levels and the environmental benefits projected in the final CAIR and CAMR because the likely effect of the proposed rule would be to exempt a small number of units with a very small amount of emissions compared to the overall emissions caps. Similarly, the proposed change to the boiler MACT would result in little change in emissions levels and projected environmental benefits. The health and safety risks are essentially unchanged from those analyzed in CAIR, the CAIR FIP, CAMR, the proposed CAMR Federal Plan, and the boiler MACT.

The public is invited to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assessed results of early life exposure to SO_2, NO_X or Hg.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through OMB, with explanations when EPA decides not to use available and applicable voluntary consensus standards.

This proposed action does not propose the use of any additional technical standards beyond those cited in the final CAIR, CAMR and boiler MACT. Therefore, EPA is not considering the use of any additional voluntary consensus standards for this action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. According to EPA guidance,[10] agencies are to assess whether minority or low-income populations face risks or a rate of exposure to hazards that are significant and that ''appreciably exceed or is likely to appreciably exceed the risk or rate to the general population or to the appropriate comparison group.'' (EPA, 1998)

In accordance with Executive Order 12898, EPA expects this proposal to have no disproportionate negative impacts on minority or low income populations because the emissions reduced by CAIR and CAMR remain essentially the same.

[10] U.S. Environmental Protection Agency, 1998. Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses. Office of Federal Activities, Washington, DC, April, 1998.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Coal, Electric power plants, Intergovernmental relations, Metals, Natural gas, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 62

Environmental protection, Air pollution control, Hazardous Substances, Reporting and recordkeeping requirements.

40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 72

Acid rain, Air pollution control, Carbon dioxide, Electric utilities, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 78

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 96

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Air pollution, control, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 97

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Sulfur dioxide, Reporting and recordkeeping requirements.

Dated: April 16, 2007.

Stephen L. Johnson,

Administrator.

For the reasons set forth in the preamble, parts 51, 60, 62, 63, 72, 78, 96, and 97 of chapter 1 of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

2. Section 51.123(cc) is amended as follows:

a. In the definition of ''Allocate or allocation'', by revising the word ''source'' to read ''source or other entity'';

b. In the definition of ''Cogeneration unit'', by revising, in paragraph (2), the words ''calendar year after which'' to read ''calendar year after the calendar year in which'' and by adding a new paragraph (3);

c. In paragraph (2) of the definition of ''Combustion turbine'', by revising the words ''any associated heat recovery steam generator'' to read ''any associated duct burner, heat recovery steam generator,'';

d. By revising the definition of ''Maximum design heat input'';

e. In the definition of ''Nameplate capacity'', by revising the words ''other deratings) as specified'' to read ''other deratings as of such installation as specified'' and by revising the words ''maximum amount as specified'' to read ''maximum amount as of such completion as specified''; and

f. By adding in alphabetical order a new definition of ''Construction commenced'' to read as follows:

§ 51.123 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen pursuant to the Clean Air Interstate Rule.

* * * * *

(cc) * * *

Cogeneration unit means * * *

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input only from fossil fuel if the unit is a boiler—

(i) For which construction commenced on or before April 25, 2007; and

(ii) Having equipment used to produce electricity and useful thermal energy through sequential use of energy, for which construction commenced on or before April 25, 2007.

* * * * *

Construction commenced means, with regard to a boiler or equipment under paragraph (3) of the definition of *Cogeneration unit* in this paragraph, that the owner or operator has undertaken, or entered into a contractual obligation

to undertake and complete within a reasonable time, a continuous program of fabrication, erection, or installation of the boiler or equipment.

* * * * *

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

* * * * *

3. Section 51.124(q) is amended as follows:

a. In the definition of ''Allocate or allocation'', by revising the word ''source'' to read ''source or other entity'';

b. In the definition of ''Cogeneration unit'', by revising, in paragraph (2), the words ''calendar year after which'' to read ''calendar year after the calendar year in which'' and by adding a new paragraph (3);

c. In paragraph (2) of the definition of ''Combustion turbine'', by revising the words ''any associated heat recovery steam generator'' to read ''any associated duct burner, heat recovery steam generator,'';

d. By revising the definition of ''Maximum design heat input'';

e. In the definition of ''Nameplate capacity'', by revising the words ''other deratings) as specified'' to read ''other deratings as of such installation as specified'' and by revising the words ''maximum amount as specified'' to read ''maximum amount as of such completion as specified''; and

f. By adding in alphabetical order a new definition of ''Construction commenced'' to read as follows:

§ 51.124 Findings and requirements for submission of State implementation plan revisions relating to emissions of sulfur dioxide pursuant to the Clean Air Interstate Rule.

* * * * *

(q) * * *

Cogeneration unit means * * *

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input only from fossil fuel if the unit is a boiler—

(i) For which construction commenced on or before April 25, 2007; and

(ii) Having equipment used to produce electricity and useful thermal energy through sequential use of energy, for which construction commenced on or before April 25, 2007.

* * * * *

Construction commenced means, with regard to a boiler or equipment under paragraph (3) of the definition of *Cogeneration unit* in this paragraph, that the owner or operator has undertaken, or entered into a contractual obligation to undertake and complete within a reasonable time, a continuous program of fabrication, erection, or installation of the boiler or equipment.

* * * * *

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

* * * * *

PART 60—[AMENDED]

4. The authority citation for part 60 is revised to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

5. Section 60.24(h)(8) is amended as follows:

a. In the definition of ''Cogeneration unit'', by adding a new paragraph (3); and

b. By adding in alphabetical order a new definition of ''Construction commenced'' to read as follows:

§ 60.24 Emission standards and compliance schedules.

* * * * *

(h) * * *

(8) * * *

Cogeneration unit means * * *

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input only from fossil fuel if the unit is a boiler—

(i) For which construction commenced on or before April 25, 2007; and

(ii) Having equipment used to produce electricity and useful thermal energy through sequential use of energy, for which construction commenced on or before April 25, 2007.

* * * * *

Construction commenced means, with regard to a boiler or equipment under paragraph (3) of the definition of *Cogeneration unit* in this paragraph, that the owner or operator has undertaken, or entered into a contractual obligation to undertake and complete within a reasonable time, a continuous program of fabrication, erection, or installation of the boiler or equipment.

* * * * *

6. Section 60.4102 is amended as follows:

a. In the definition of ''Cogeneration unit'', by adding a new paragraph (3); and

b. By adding in alphabetical order a new definition of ''Construction commenced'' to read as follows:

§ 60.4102 Definitions.

* * * * *

Cogeneration unit means * * *

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input only from fossil fuel if the unit is a boiler—

(i) For which construction commenced on or before April 25, 2007; and

(ii) Having equipment used to produce electricity and useful thermal energy through sequential use of energy, for which construction commenced on or before April 25, 2007.

* * * * *

Construction commenced means, with regard to a boiler or equipment under paragraph (3) of the definition of *Cogeneration unit* in this section, that the owner or operator has undertaken, or entered into a contractual obligation to undertake and complete within a reasonable time, a continuous program of fabrication, erection, or installation of the boiler or equipment.

* * * * *

PART 62—[AMENDED]

7. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

8. Section 62.15902 as proposed on December 22, 2006 (71 FR 77110) is amended as follows:

a. In the definition of ''Cogeneration unit'', by adding a new paragraph (3); and

b. By adding in alphabetical order a new definition of ''Construction commenced'' to read as follows:

§ 62.15902 Definitions.

* * * * *

Cogeneration unit means * * *

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input only from fossil fuel if the unit is a boiler—

(i) For which construction commenced on or before April 25, 2007; and

(ii) Having equipment used to produce electricity and useful thermal energy through sequential use of energy, for which construction commenced on or before April 25, 2007.

* * * * *

Construction commenced means, with regard to a boiler or equipment under paragraph (3) of the definition of

Cogeneration unit in this section, that the owner or operator has undertaken, or entered into a contractual obligation to undertake and complete within a reasonable time, a continuous program of fabrication, erection, or installation of the boiler or equipment.

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

9. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

10. Section 63.7491 is amended by revising paragraph (c) to read as follows:

§ 63.7491 Are any boilers or process heaters not subject to this subpart?

* * * * *

(c) An electric utility steam generating unit (including a unit covered by 40 CFR part 60, subpart Da) or an electric generating unit as defined in 40 CFR 60.24(h)(8) (including a Hg Budget unit covered by the provisions of a State Plan approved under 40 CFR 60.24(h)(6)).

* * * * *

PART 72—PERMITS REGULATION

11. The authority citation for part 72 is revised to read as follows:

Authority: 42 U.S.C. 7601 and 7651 *et seq.*

12. Section 72.24 is amended, in paragraph (a)(9) introductory text, by revising the words ''life-of-the-unit, firm power contractual arrangements'' to read ''a life-of-the-unit, firm power contractual arrangement''.

PART 78—APPEAL PROCEDURES

13. The authority citation for part 78 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7411, 7426, 7601, and 7651, *et seq.*

14. Section 78.1 is amended by revising paragraph (a)(1) to read as follows:

§ 78.1 Purpose and scope.

(a)(1) This part shall govern appeals of any final decision of the Administrator under subpart HHHH of part 60 of this chapter or State regulations approved under § 60.24(h)(6)(i) or (ii) of this chapter, subpart LLL of part 62 of this chapter, part 72, 73, 74, 75, 76, or 77 of this chapter, subparts AA through II of part 96 of this chapter or State regulations approved under § 51.123(o)(1) or (2) of this chapter, subparts AAA through III of part 96 of this chapter or State regulations approved under § 51.124(o)(1) or (2) of this chapter, subparts AAAA through IIII of part 96 of this chapter or State regulations approved under § 51.123(aa)(1) or (2) of this chapter, or part 97 of this chapter; *provided* that matters listed in § 78.3(d) and preliminary, procedural, or intermediate decisions, such as draft Acid Rain permits, may not be appealed. All references in paragraph (b) of this section and in § 78.3 subpart HHHH of part 60 of this chapter, to subparts AA through II of part 96 of this chapter, subparts AAA through III of part 96 of this chapter, and subparts AAAA through IIII of part 96 of this chapter shall be read to include the comparable provisions in State regulations approved under § 60.24(h)(6)(i) or (ii) of this chapter, § 51.123(o)(1) or (2) of this chapter, § 51.124(o)(1) or (2) of this chapter, and § 51.123(aa)(1) or (2) of this chapter, respectively.

* * * * *

PART 96—[AMENDED]

15. The authority citation for part 96 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7601, and 7651, *et seq.*

16. Section 96.102 is amended as follows:

a. In the definition of ''Cogeneration unit'', by adding a new paragraph (3);

b. In the definition of ''Permitting authority'', by removing the words ''in accordance with subpart CC of this part''; and

c. By adding in alphabetical order a new definition of ''Construction commenced'' to read as follows:

§ 96.102 Definitions.

* * * * *

Cogeneration unit means * * *

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input only from fossil fuel if the unit is a boiler—

(i) For which construction commenced on or before April 25, 2007; and

(ii) Having equipment used to produce electricity and useful thermal energy through sequential use of energy, for which construction commenced on or before April 25, 2007.

* * * * *

Construction commenced means, with regard to a boiler or equipment under paragraph (3) of the definition of *Cogeneration unit* in this section, that the owner or operator has undertaken, or entered into a contractual obligation to undertake and complete within a reasonable time, a continuous program of fabrication, erection, or installation of the boiler or equipment.

* * * * *

17. Section 96.202 is amended as follows:

a. In the definition of ''Cogeneration unit'', by adding a new paragraph (3);

b. In the definition of ''Permitting authority'', by removing the words ''in accordance with subpart CCC of this part''; and

c. By adding in alphabetical order a new definition of ''Construction commenced'' to read as follows:

§ 96.202 Definitions.

* * * * *

Cogeneration unit means * * *

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input only from fossil fuel if the unit is a boiler—

(i) For which construction commenced on or before April 25, 2007 and

(ii) Having equipment used to produce electricity and useful thermal energy through sequential use of energy, for which construction commenced on or before April 25, 2007.

* * * * *

Construction commenced means, with regard to a boiler or equipment under paragraph (3) of the definition of *Cogeneration unit* in this section, that the owner or operator has undertaken, or entered into a contractual obligation to undertake and complete within a reasonable time, a continuous program of fabrication, erection, or installation of the boiler or equipment.

* * * * *

18. Section 96.302 is amended as follows:

a. In the definition of ''Cogeneration unit'', a new paragraph (3);

b. In the definition of ''Permitting authority'', by removing the words ''in accordance with subpart CCCC of this part''; and

c. By adding in alphabetical order a new definition of ''Construction commenced'' to read as follows:

§ 96.302 Definitions.

* * * * *

Cogeneration unit means * * *

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input only from fossil fuel if the unit is a boiler—

(i) For which construction commenced on or before April 25, 2007; and

(ii) Having equipment used to produce electricity and useful thermal

energy through sequential use of energy, for which construction commenced on or before April 25, 2007.

* * * * *

Construction commenced means, with regard to a boiler or equipment under paragraph (3) of the definition of *Cogeneration unit* in this section, that the owner or operator has undertaken, or entered into a contractual obligation to undertake and complete within a reasonable time, a continuous program of fabrication, erection, or installation of the boiler or equipment.

* * * * *

19. The authority citation for part 97 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

20. Section 97.102 is amended as follows:

a. In the definition of ''Cogeneration unit'', by adding a new paragraph (3);

b. In the definition of ''Permitting authority'', by removing the words ''in accordance with subpart CC of this part''; and

c. By adding in alphabetical order a new definition of ''Construction commenced'' to read as follows:

§ 97.102 Definitions.

* * * * *

Cogeneration unit means * * *

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input only from fossil fuel if the unit is a boiler—

(i) For which construction commenced on or before April 25, 2007; and

(ii) Having equipment used to produce electricity and useful thermal energy through sequential use of energy, for which construction commenced on or before April 25, 2007.

* * * * *

Commencing construction means, with regard to a boiler or equipment under paragraph (3) of the definition of *Cogeneration unit* in this section, that the owner or operator has undertaken, or entered into a contractual obligation to undertake and complete within a reasonable time, a continuous program of fabrication, erection, or installation of the boiler or equipment.

* * * * *

21. Section 97.202 is amended as follows:

a. In the definition of ''Cogeneration unit'', by adding a new paragraph (3);

b. In the definition of ''Permitting authority'', by removing the words ''in accordance with subpart CCC of this part''; and

c. By adding in alphabetical order a new definition of ''Construction commenced'' to read as follows:

§ 97.202 Definitions.

* * * * *

Cogeneration unit means * * *

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input only from fossil fuel if the unit is a boiler—

(i) For which construction commenced on or before April 25, 2007; and

(ii) Having equipment used to produce electricity and useful thermal energy through sequential use of energy, for which construction commenced on or before April 25, 2007.

* * * * *

Construction commenced means, with regard to a boiler or equipment under paragraph (3) of the definition of *Cogeneration unit* in this section, that the owner or operator has undertaken, or entered into a contractual obligation to undertake and complete within a reasonable time, a continuous program of fabrication, erection, or installation of the boiler or equipment.

* * * * *

22. Section 97.302 is amended as follows:

a. In the definition of ''Cogeneration unit'', by adding a new paragraph (3);

b. In the definition of ''Permitting authority'', by removing the words ''in accordance with subpart CCCC of this part''; and

c. By adding in alphabetical order a new definition of ''Construction commenced'' to read as follows:

§ 97.302 Definitions.

* * * * *

Cogeneration unit means * * *

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input only from fossil fuel if the unit is a boiler—

(i) For which construction commenced on or before April 25, 2007; and

(ii) Having equipment used to produce electricity and useful thermal energy through sequential use of energy, for which construction commenced on or before April 25, 2007.

* * * * *

Construction commenced means, with regard to a boiler or equipment under paragraph (3) of the definition of *Cogeneration unit* in this section, that the owner or operator has undertaken, or entered into a contractual obligation to undertake and complete within a reasonable time, a continuous program of fabrication, erection, or installation of the boiler or equipment.

* * * * *

[FR Doc. E7–7536 Filed 4–24–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R08–OAR–2006–0163; FRL–8305–2]

Approval and Promulgation of Air Quality Implementation Plans; State of Montana; Missoula Carbon Monoxide Redesignation to Attainment, Designation of Areas for Air Quality Planning Purposes, and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Montana. On May 27, 2005, the Governor of Montana submitted a request to redesignate the Missoula ''moderate'' carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS). The Governor also submitted a CO maintenance plan which includes transportation conformity motor vehicle emission budgets (MVEB) for 2000, 2010, and 2020. In addition, EPA is proposing to approve CO periodic emission inventories for 1993 and 1996 for the Missoula nonattainment area that the State had previously submitted. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before May 25, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2006–0163, by one of the following methods:

—*http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

—*E-mail: videtich.callie@epa.gov* and *fiedler.kerri@epa.gov.*

—*Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

—*Mail:* Callie A. Videtich, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

—*Hand Delivery:* Callie A. Videtich, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

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Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kerri Fiedler, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, phone (303) 312–6493, and e-mail at: *fiedler.kerri@epa.gov.*

SUPPLEMENTARY INFORMATION:

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *NAAQS* mean National Ambient Air Quality Standard.

(iv) The initials *SIP* mean or refer to State Implementation Plan.

(v) The word *State* means the State of Montana, unless the context indicates otherwise.

I. General Information

(a). What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

(b). *Tips for Preparing Your Comments.* When submitting comments, remember to:

A. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

B. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

C. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

D. Describe any assumptions and provide any technical information and/or data that you used.

E. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

F. Provide specific examples to illustrate your concerns, and suggest alternatives.

G. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

Make sure to submit your comments by the comment period deadline identified.

II. What is the purpose of this action?

In this action, we are proposing approval of a change in the legal designation of the Missoula area from nonattainment for CO to attainment. We're proposing approval of the year 2000 attainment emission inventory and the maintenance plan that is designed to keep the area in attainment for CO for the next 13 years. We're also proposing approval of the transportation conformity motor vehicle emission budgets (MVEB) for 2000, 2010, and 2020, and we're proposing approval of the 1993 and 1996 CO periodic emission inventories.

We originally designated Missoula as nonattainment for CO under the provisions of the 1977 CAA Amendments (see 43 FR 8962, March 3, 1978). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C) of the Clean Air Act (CAA), we designated the

Missoula area as nonattainment for CO because the area had been designated as nonattainment before November 15, 1990. Under section 186 of the CAA, Missoula was classified as a ''moderate'' CO nonattainment area with a design value less than or equal to 12.7 parts per million (ppm), and was required to attain the CO NAAQS by December 31, 1995. See 56 FR 56694, November 6, 1991. Further information regarding this classification and the accompanying requirements are described in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990.'' See 57 FR 13498, April 16, 1992.

Under the CAA, we can change designations if acceptable data are available and if certain other requirements are met. See CAA section 107(d)(3)(D). Section 107(d)(3)(E) of the CAA provides that the Administrator may not promulgate a redesignation of a nonattainment area to attainment unless:

(i) The Administrator determines that the area has attained the national ambient air quality standard;

(ii) The Administrator has fully approved the applicable implementation plan for the area under CAA section 110(k);

(iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

(v) The State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

Before we can approve the redesignation request, we must decide that all applicable SIP elements have been fully approved. Approval of the applicable SIP elements may occur simultaneously with our final approval of the redesignation request. That's why we are also proposing approval of the 1993 and 1996 CO periodic emission inventories and the year 2000 emission inventory.

III. What is the State's process to submit these materials to EPA?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a State to us.

The Missoula City-County Air Pollution Control Board (MCCAPCB) held a public hearing for the Missoula CO redesignation request and the maintenance plan on November 18, 2004. The MCCAPCB adopted the Missoula CO redesignation request and maintenance plan on March 7, 2005. The Missoula CO redesignation request and maintenance plan were then forwarded to the Montana Department of Environmental Quality (MDEQ) for the State to conduct its public hearing. The MDEQ held a public hearing for the Missoula CO redesignation request and the maintenance plan on April 22, 2005 after which the SIP materials were forwarded to the Governor for his submittal to EPA. These SIP revision materials were submitted by the Governor to us on May 27, 2005.

We have evaluated the Governor's submittal and have concluded that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. By operation of law, under section 110(k)(1)(B) of the CAA, the Governor's May 27, 2005, submittal became complete on November 27, 2005.

IV. EPA's Evaluation of the Missoula Redesignation Request and Maintenance Plan

Under the CAA, we can change designations of areas if acceptable data are available and if certain other requirements are met. See CAA section 107(d)(3)(D). We have reviewed the Missoula area's redesignation request and maintenance plan (section 2.0) and believe that approval of the request is warranted, consistent with the requirements of CAA section 107(d)(3)(E) as presented in our section II above.

As we noted above, before we can approve the redesignation request, we must decide that all applicable SIP elements have been fully approved. Approval of the applicable SIP elements may occur simultaneously with final approval of the redesignation request. That's why we are also proposing to approve the 1993 and 1996 periodic emission inventories and the year 2000 attainment inventory (to also suffice as the 1999 periodic emission inventory.) The following are descriptions of how the section 107(d)(3)(E) requirements are being addressed.

(a) Redesignation Criterion: The Area Must Have Attained the Carbon Monoxide (CO) NAAQS

Section 107(d)(3)(E)(i) of the CAA states that for an area to be redesignated to attainment, the Administrator must determine that the area has attained the applicable NAAQS. As described in 40 CFR 50.8, the national primary ambient air quality standards for carbon monoxide are 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year, and 35 parts per million (40 milligrams per cubic meter) for a 1-hour average concentration not to be exceeded more than once per year. 40 CFR 50.8 continues by stating that the levels of CO in the ambient air shall be measured by a reference method based on 40 CFR part 50, Appendix C, and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53.

Attainment of the CO standards is not a momentary phenomenon based on short-term data. Instead, we consider an area to be in attainment if each of the CO ambient air quality monitors in the area doesn't have more than one exceedance of the relevant CO standard over a one-year period. See 40 CFR 50.8 and 40 CFR 50, Appendix C. If any monitor in the area's CO monitoring network records more than one exceedance of the relevant CO standard during a one-year calendar period, then the area is in violation of the CO NAAQS. In addition, our interpretation of the CAA and EPA national policy [1] has been that an area seeking redesignation to attainment must show attainment of the CO NAAQS for at least a continuous two-year calendar period. In addition, the area must also continue to show attainment through the date that we promulgate the redesignation in the **Federal Register**.

Montana's CO redesignation request for the Missoula area is based on an analysis of quality assured ambient air quality monitoring data that are relevant to the redesignation request. As presented in section 2.1.1 of the maintenance plan, ambient air quality monitoring data for consecutive calendar years 2000 through 2003 show a measured exceedance rate of the CO NAAQS of 1.0 or less per year, per monitor, in the Missoula nonattainment area. Further, we have reviewed ambient air quality data from 2004 through December 2006 and the

[1] Refer to EPA's September 4, 1992, John Calcagni policy memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment.''

Missoula area continues to show attainment of the CO NAAQS. All of these data were collected and analyzed as required by EPA (see 40 CFR 50.8 and 40 CFR 50, Appendix C) and have been archived by the State in our Air Quality System (AQS) national database. Therefore, we believe the Missoula area has met the first component for redesignation: demonstration of attainment of the CO NAAQS. We note that the State has also committed, in the maintenance plan, to continue the necessary operation of the CO monitor in compliance with all applicable Federal regulations and guidelines.

(b) Redesignation Criterion: The Area Must Have Met All Applicable Requirements Under Section 110 and Part D of the CAA and Title II of the CAA

To be redesignated to attainment, section 107(d)(3)(E)(v) requires that an area must meet all applicable requirements under section 110 and part D of the CAA. We interpret section 107(d)(3)(E)(v) to mean that for a redesignation to be approved by us, the State must meet all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. In our evaluation of a redesignation request, we don't need to consider other requirements of the CAA that became due after the date of the submission of a complete redesignation request.

1. CAA Section 110 Requirements

On January 10, 1980, we approved revisions to Montana's SIP as meeting the requirements of section 110(a)(2) of the CAA (see 45 FR 2034). Although section 110 of the CAA was amended in 1990, most of the changes were not substantial. Thus, we have determined that the SIP revisions approved in 1980 continue to satisfy the requirements of section 110(a)(2). In addition, we have analyzed the SIP elements we are approving as part of this action, and we have determined they comply with the relevant requirements of section 110(a)(2).

2. Part D Requirements

Before the Missoula ''moderate'' CO nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, whether classified or nonclassifiable. Subpart 3 of part D contains specific provisions for ''moderate'' CO nonattainment areas.

The relevant subpart 1 requirements are contained in sections 172(c) and 176. Our General Preamble (see 57 FR 13529, 13533, April 16, 1992) provides EPA's interpretations of the CAA requirements for ''moderate'' CO areas. The General Preamble (see 57 FR 13530, et seq.) provides that the applicable requirements of CAA section 172 are 172(c)(3) (emissions inventory), 172(c)(5) (new source review permitting program), 172(c)(7) (the section 110(a)(2) air quality monitoring requirements), and 172(c)(9) (contingency measures). It is also worth noting that we interpreted the requirements of sections 172(c)(2) (reasonable further progress—RFP) and 172(c)(6) (other measures) as being irrelevant to a redesignation request because they only have meaning for an area that is not attaining the standard. See EPA's September 4, 1992, memorandum entitled, ''Procedures for Processing Requests to Redesignate Areas to Attainment'', and the General Preamble, 57 FR at 13564, dated April 16, 1992. Finally, the State has not sought to exercise the options that would trigger sections 172(c)(4) (identification of certain emissions increases) and 172(c)(8) (equivalent techniques). Thus, these provisions are also not relevant to this redesignation request.

The relevant subpart 3 provisions were created when the CAA was amended on November 15, 1990 and appear in section 187 of the CAA. The new CAA requirements for a CO nonattainment area, classified as ''moderate'' with a design value of 12.7 ppm or less, that are applicable to Missoula are a 1990 base year inventory (CAA section 187(a)(1)), contingency provisions (CAA section 187(a)(3)), and periodic emission inventories (CAA section 187(a)(5)).

A. Relevant CAA subpart 1 requirements.

1. Emissions Inventory. For the CAA section 172(c)(3) emissions inventory requirement, the State submitted a 1990 base year CO emissions inventory for the Missoula area on July 18, 1995 which met the requirements of section 172(c)(3) of the CAA. We approved this inventory on December 15, 1997 (62 FR 65613).

2. New Source Review (NSR) and Prevention of Significant Deterioration (PSD). For the CAA section 172(c)(5) New Source Review (NSR) requirements, the CAA requires all nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions will not result from any new or modified stationary major sources and a general offset rule. The State of Montana has a fully-approved NSR program (60 FR 36715, July 18, 1995.) The State also has a fully approved PSD program (60 FR 36715, July 18, 1995) that will apply, instead of nonattainment NSR, if we approve the redesignation to attainment.

3. Air Quality Monitoring Requirements. For the CAA section 172(c)(7) provisions (compliance with the CAA section 110(a)(2) Air Quality Monitoring Requirements), our interpretations are presented in the General Preamble (57 FR 13535). CO nonattainment areas are to meet the ''applicable'' air quality monitoring requirements of section 110(a)(2) of the CAA. We have determined that the Missoula area has met the applicable air quality monitoring requirements of section 110(a)(2) of the CAA. See our descriptions in section IV.A above.

4. Contingency Measures. Section 172(c)(9) of the CAA requires the submittal of contingency measures to be implemented in the event that an area fails to make reasonable further progress or to attain the NAAQS by the date applicable (which for a CO nonattainment area, with a design value of less than 12.7 ppm, was December 31, 1995.) To meet this requirement the State submitted a contingency measure, involving residential woodburning devices, on March 2, 1994. We approved this CO contingency measure on December 13, 1994 (59 FR 64133).

5. Conformity. Section 176 of the CAA contains requirements related to conformity. Although EPA's regulations (see 40 CFR 51.390) require that states adopt transportation conformity provisions in their SIPs for areas designated nonattainment or subject to an EPA-approved maintenance plan, we have decided that a transportation conformity SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in EPA's 1996 approval of the Boston carbon monoxide redesignation. (See 61 FR 2918, January 30, 1996.)

B. Relevant CAA subpart 3 requirements.

1. Emissions Inventory. For the CAA section 187(a)(1) emissions inventory requirement, the State submitted a 1990 base year CO emissions inventory for the Missoula area on July 18, 1995 which met the requirements of section 187(a)(1) of the CAA. We approved this inventory on December 15, 1997 (62 FR 65613).

2. Periodic emission inventories. For the CAA section 187(a)(5) periodic

emissions inventory requirement, the State submitted CO periodic emission inventories (PEI) for 1993 and 1996 on January 27, 2000. In addition, the State submitted a year 2000 CO emission inventory, on July 19, 2004, that qualifies for the 1999 PEI and is also the basis for the attainment year 2000 CO emission inventory that is part of the State's Missoula CO maintenance plan. We have reviewed these CO periodic emission inventories and have determined they contain comprehensive information with respect to point, area, non-road, and on-road mobile sources and were prepared in accordance with EPA guidance. We are proposing approval of the 1993 PEI, the 1996 PEI, and the year 2000 attainment inventory (for the 1999 PEI requirement) in conjunction with this action's proposed approval of the Missoula CO redesignation to attainment and maintenance plan.

3. CAA Title II requirements. The relevant CAA Title II requirement is contained in section 211(m)(1) which requires the implementation of an oxygenated fuels program for CO areas with a design value of 9.5 ppm or greater.

A. Title II, Part A of the CAA: Oxygenated fuels program (CAA section 211(m)(1)).

Section 211(m)(1) of the CAA requires the submittal of a SIP revision to implement an oxygenated fuels program for CO nonattainment areas with a design value of 9.5 ppm or greater. To address this requirement, the State submitted a SIP revision on November 6, 1992 for the implementation of an oxygenated fuels program in Missoula County. EPA approved this SIP revision on November 8, 1994 (see 59 FR 55585).

(c) Redesignation Criterion: The Area Must Have a Fully Approved SIP Under Section 110(k) of the CAA

Section 107(d)(3)(E)(ii) of the CAA states that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

As noted above, EPA previously approved SIP revisions based on the pre-1990 CAA as well as SIP revisions required under the 1990 amendments to the CAA. In this action, EPA is proposing approval of the Missoula area's 1993 periodic CO emissions inventory, the 1996 periodic CO emissions inventory, and the 2000 CO emission inventory (as meeting the 1999 periodic emissions inventory requirement). Thus, with our final approval of these SIP revisions, we will have fully approved the Missoula area's CO element of the SIP under section 110(k) of the CAA.

(d) Redesignation Criterion: The Area Must Show That the Improvement in Air Quality Is Due to Permanent and Enforceable Emissions Reductions

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The CO emissions reductions for the Missoula area, that are further described in section 2.3 of the maintenance plan, were achieved primarily through an oxygenated fuels program, Federal Motor Vehicle Control Program, residential woodburning regulations, changes in the transportation infrastructure involving the reconstruction of the Brooks/South/Russell (B/S/R) intersection, and outdoor open burning regulations. These five control strategies are fully discussed in section 2.3 of the maintenance plan and are summarized below.

1. Oxygenated Fuels. As described in section 2.3.2.1 of the maintenance plan, since November of 1992, all gasoline sold within the Missoula CO nonattainment area must have a minimum oxygen content of 2.7% by weight from November 1st through the last day of February each year. The use of oxygenates in gasoline helps provide additional oxygen in the fuel for better combustion of the fuel in the engine and a decrease in tailpipe CO emissions.

2. Federal Motor Vehicle Control Program (FMVCP). Section 2.3.2.2 of the maintenance plan discusses the FMVCP which involves Federal provisions that require vehicle manufacturers to meet more stringent vehicle emission limitations for new vehicles in future years. These emission limitations are phased in (as a percentage of new vehicles manufactured) over a period of years. As new, lower emitting vehicles replace older, higher emitting vehicles (''fleet turnover''), emission reductions are realized for a particular area such as Missoula.

3. Residential Woodburning. As described in section 2.3.2.3 of the maintenance plan, in order to reduce the amount of CO emissions from residential woodburning, Missoula adopted progressively more stringent solid fuel burning device regulations. Currently, the only new solid fuel burning devices permitted in Missoula are pellet stoves and the regulations also require that most woodstoves be removed at the time of sale of a property.

4. Transportation Infrastructure. Section 2.3.2.4 of the maintenance plan describes the changes in transportation infrastructure that specifically address the B/S/R intersection. Violations of the CO NAAQS were occurring at the B/S/R intersection in the 1980s and an initial intersection reconstruction was completed in 1985. This effort involved restricting left turn lanes and adding right turn and departure lanes. The CO designation of nonattainment for Missoula in 1991 was again tied to monitoring data near the B/S/R intersection. The final reconstruction project involved the realignment of South Avenue such that South Avenue no longer enters the intersection. This construction effort was scheduled to be completed by the end of 2005. The South Avenue realignment simplified the intersection, reducing the projected peak-hour delay from 120 seconds to 20 seconds, and also allowed for the synchronization of all traffic lights along Brooks Street from Reserve to Mount. This reduces congestion along the whole corridor.

5. Outdoor Burning. Section 2.3.2.5 of the maintenance plan describes the provisions of Missoula's outdoor burning regulations. These regulations reduce the impact of outdoor burning, especially during December, January, and February, by requiring a permit for each burn, allowing only the burning of untreated lumber and natural vegetation, requiring burners to call the Outdoor Burning Hotline to confirm if any burning or air quality restrictions are in effect, establishing burning seasons to reduce the generation of smoke, and prohibiting outdoor burning during December, January, and February except for ceremonial bonfires, emergency burning, and essential wintertime burning.

We have evaluated the various Local, State, and Federal control measures, the original 1990 base year CO emission inventory (62 FR 65613, December 15, 1997), the 1993 periodic CO emission inventory, the 1996 periodic CO emission inventory, and the 2000 attainment year CO inventory that was provided with the State's May 27, 2005 submittal and have concluded that the improvement in air quality in the Missoula nonattainment area has resulted from emission reductions that are permanent and enforceable.

(e) Redesignation Criterion: The Area Must Have a Fully Approved Maintenance Plan Under Section 175A of the CAA

Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the promulgation of the redesignation, the State must submit a revised maintenance plan that demonstrates continued attainment for a subsequent ten-year period following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for adoption and implementation, that are adequate to assure prompt correction of a violation. In addition, we issued further maintenance plan interpretations in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498, April 16, 1992), ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental'' (57 FR 18070, April 28, 1992), and the EPA guidance memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' from John Calcagni, Director, Air Quality Management Division, Office of Air Quality and Planning Standards, to Regional Air Division Directors, dated September 4, 1992.

In this **Federal Register** action, EPA is proposing approval of the maintenance plan for the Missoula nonattainment area because we have determined, as detailed below, that the State's maintenance plan meets the requirements of section 175A and is consistent with the documents referenced above. Our analysis of the pertinent maintenance plan requirements, with reference to the Governor's May 27, 2005, submittal, is provided as follows:

1. Emissions Inventories—Attainment Year and Projections

EPA's interpretations of the CAA section 175A maintenance plan requirements are generally provided in the General Preamble (see 57 FR 13498, April 16, 1992) and the September 4, 1992, Calcagni Memorandum referenced above. Under our interpretations, areas seeking to redesignate to attainment for CO may demonstrate future maintenance of the CO NAAQS either by showing that future CO emissions will be equal to or less than the attainment year emissions or by providing a modeling demonstration.

The maintenance plan that the Governor submitted on May 27, 2005, includes comprehensive inventories of CO emissions for the Missoula area. These inventories include emissions from stationary point sources, area sources, non-road mobile sources, and on-road mobile sources. The maintenance plan uses a year 2000 attainment inventory and includes interim-year projections with a final maintenance year of 2020. More detailed descriptions of the 2000 attainment year inventory and the projected inventories are documented in section 2.5.1, section 2.5.2.2, and Appendix D of the maintenance plan. The State's submittal contains detailed emission inventory information that was prepared in accordance with EPA guidance. Summary emission figures from the 2000 attainment year, the interim projected years, and the final maintenance year of 2020 are provided in Table IV–1 below.

TABLE IV–1.—CO EMISSION INVENTORIES FOR THE MISSOULA AREA

[All figures in tons per day of CO]

Year	2000	2005	2010	2015	2020
Point Sources	0.30	0.33	0.37	0.41	0.46
Area Sources	6.62	6.37	6.10	5.88	5.69
Non-Road Mobile Sources	5.06	5.73	6.14	6.52	7.01
On-Road Mobile Sources	44.86	32.73	27.10	24.97	22.98
Total	56.83	45.16	39.71	37.78	36.14

2. Demonstration of Maintenance—Projected Inventories and CAL3QHC Intersection Modeling

As we presented above, total CO emissions were projected forward by the State for the years 2005, 2010, 2015, and 2020. We note the State's approach for developing the projected inventories follows EPA guidance on projected emissions and we believe they are acceptable.[2] Further information regarding these CO emission inventories is also provided in section 2.5.2.2 and in Appendix D of the maintenance plan. The projected inventories show that CO emissions are not estimated to exceed the 2000 attainment level during the time period of 2000 through 2020 and, therefore, the Missoula area has satisfactorily demonstrated maintenance.

In addition to the emission inventory projections, the State also performed ''hot-spot'' modeling to evaluate predicted CO concentrations at the B/S/R intersection. This effort involved the CAL3QHC–R intersection model and considered meteorological data, relevant CO emission contributions from point, area, non-road, and on-road sources, and information specific to the B/S/R intersection such as traffic patterns and intersection geometry. Consistent with EPA guidance, the State modeled CO concentrations at 60 receptor sites around the intersection and at the location of the CO ambient air quality monitoring site at the B/S/R intersection. The years modeled were 2000, 2005, 2010, and 2020. We note this modeling effort was consistent with our modeling guidance.

The results of the State's modeling for 2000, 2005, 2010, and 2020 are presented in section 2.5.2.1 and Appendix C of the maintenance plan and in Table IV–2 below.

[2] ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas'', signed by D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.

TABLE IV–2.—CAL3QHC–R MODELED CO CONCENTRATIONS FOR THE B/S/R INTERSECTION

[All values are in parts per million]

	2000	2005	2010	2020
First Maximum 8-hour CO Value	11.8	8.9	5.4	4.5
Second Maximum 8-hour CO Value	10.7	8.0	4.4	3.6
First Maximum 8-hour CO Value at the Monitor Location	7.0	5.4	3.2	2.5
Second Maximum 8-hour CO Value at the Monitor Location	6.7	5.1	2.9	2.4

As shown, the CAL3QHC–R model predicted an exceedance of the CO NAAQS in 2000 at a modeling receptor location near the intersection. We consider this to be a conservative estimate by the model. For comparison, for 2000 the model predicted first maximum 8-hour and second maximum 8-hour CO concentrations of 7.0 and 6.7 ppm, respectively, at the ambient air quality monitoring site. However, actual ambient air quality data from the monitor for 2000 were a first maximum 8-hour value of 3.9 ppm and second maximum 8-hour value of 3.3 ppm (ref. section 2.1.1 and Figure 2–3 of the maintenance plan.)

Based on the information provided in sections 2.5.2.1 and 2.5.2.2, the maintenance plan concludes that maintenance of the CO NAAQS is demonstrated. Specifically, the actual monitored values for 2000 indicate no exceedances of the CO NAAQS for the Missoula area, the modeled CO values for 2005, 2010, and 2020 are less than the 8-hour CO NAAQS (9.0 ppm), and, as stated earlier in this action, predicted CO emissions for 2005, 2010, and 2020 are all less than the attainment year levels of 2000.

We have reviewed the State's CAL3QHC–R modeling data and results and the attainment year and projected years CO emission inventory information, and have concluded that the State has satisfactorily demonstrated maintenance of the CO NAAQS through 2020.

3. Monitoring Network and Verification of Continued Attainment

Continued attainment of the CO NAAQS in the Missoula area depends, in part, on the State's efforts to track indicators throughout the maintenance period. This requirement is met in section 2.5.3 of the Missoula CO maintenance plan. In section 2.5.3 the State commits to review mobile source emission inventory data and compare that information to the emission inventory data in the Missoula CO maintenance plan. In section 2.5.3 the State also commits to continue the operation of the CO monitor in the Missoula area, specifically at the B/S/R intersection, and to annually review this monitoring network and make changes as appropriate.

Based on the above, we are approving these commitments as satisfying the relevant requirements and note that this approval will render the State's commitments federally enforceable.

4. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures.

As stated in section 2.5.5 and 2.5.5.4 of the Missoula CO maintenance plan, the contingency measures for the Missoula area will be triggered by a violation of the CO NAAQS.

Section 2.5.5.4 states that contingency measures contained in the Missoula City-County Air Pollution Control Plan will be implemented within 60 days of notification by the MDEQ and EPA that the area has violated the CO NAAQS. If those measures are not adequate, the Missoula City-County Air Pollution Control Board (MCCAPCB), in conjunction with the Air Quality Advisory Council (AQAC), will initiate a process to begin evaluating potential contingency measures. The Missoula City-County Health Department (MCCHD) and the AQAC will present recommendations to the MCCAPCB within 180 days of notification. The MCCAPCB will then hold a public hearing to consider the contingency measures recommended, along with any other contingency measures that the MCCAPCB believes may be appropriate to effectively address the violation of the CO NAAQS. The necessary contingency measures will be adopted and implemented within one year of the MCCHD being notified of the CO NAAQS violation.

The potential contingency measures that are identified in section 2.5.5.1 of the Missoula CO maintenance plan include (a) expanding the 2.7% oxygenated fuels program in Missoula County to months outside of the current program time frame of November 1st through the end of February, (b) further restricting woodstove burning, (c) increasing the oxygenated fuels content to 3.1% by weight, and (d) constructing transportation projects and implementing transportation control measures. A more complete description of the triggering mechanism and these contingency measures can be found in section 2.5.5 of the Missoula CO maintenance plan.

Based on the above, we find that the contingency plan provided in the Missoula CO maintenance plan meets the requirements of section 175A(d) of the CAA.

5. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the MCCHD and MDEQ have committed to submit a revised maintenance plan eight years after our approval of the redesignation. This provision for revising the maintenance plan is contained in section 2.5.7 of the Missoula CO maintenance plan.

V. EPA's Evaluation of the Transportation Conformity Requirements

One key provision of our conformity regulation requires a demonstration that emissions from the transportation plan and Transportation Improvement Program are consistent with the emissions budget(s) in the SIP (40 CFR sections 93.118 and 93.124). The emissions budget is defined as the level of mobile source emissions relied upon in the attainment or maintenance demonstration to maintain compliance with the NAAQS in the nonattainment or maintenance area. The rule's requirements and EPA's policy on emissions budgets are found in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62193–96) and in the sections of the rule referenced above.

Section 2.5.6 of the Missoula CO maintenance plan defines the CO motor vehicle emissions budgets in the Missoula CO maintenance area as 44.86 tons per day for 2005 through 2009, 43.22 tons per day for 2010 through 2019, and 42.67 tons per day for 2020 and beyond. As we explain more fully below, we view these as the budgets for 2000, 2010, and 2020 respectively.

Under our conformity rules, a motor vehicle emissions budget is established for a given year, not for a range of years. This is because the motor vehicle emissions budget reflects the inventory value for motor vehicle emissions in a given year, plus, potentially, any safety margin in that year. (We explain the concept of safety margin more fully below.) It is not possible to specify the same motor vehicle emissions budget for a range of years absent specific analysis supporting the derivation of that budget for each year in the range. As a practical matter, this is not usually important because our conformity rules also say that a motor vehicle emissions budget for a particular year applies for conformity analyses of emissions in that year and all subsequent years before the next budget year. See 40 CFR 93.118(b)(1)(ii) (''Emissions in years for which no motor vehicle emissions budget(s) are specifically established must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year.'').

The maintenance plan's ''2005 through 2009'' motor vehicle emissions budget in fact is derived directly from the year 2000 inventory value for on-road vehicle emissions. It is apparent from the maintenance plan that MCCHD and MDEQ were not relying on 2005 inventory numbers to establish the ''2005 through 2009'' budget, and thus, it is not truly a 2005 budget. We assume the maintenance plan designates this as a 2005 to 2009 budget because the maintenance plan was adopted in 2005, and the years 2000 through 2004 had already passed. However, because it was derived from 2000 values, the ''2005 through 2009'' budget is actually a 2000 budget, and we will refer to it as such in the remainder of this proposal. Consistent with our discussion above, the 2000 budget applies for conformity analyses of emissions in the year 2000 and all subsequent years before the next budget year; i.e., since the next budget year is 2010, the 2000 budget applies for analyses of years 2000 through 2009.

Similarly, the ''2010 through 2019'' and ''2020 and beyond'' budgets were derived from, respectively, 2010 and 2020 inventory values for on-road vehicle emissions and available safety margin. Thus, we will refer to these as the 2010 and 2020 budgets in the remainder of this proposal.

For the Missoula CO maintenance plan, the ''safety margin'' is the difference between the attainment year (2000) total emissions and the projected future year's total emissions. Part or all of the safety margin may be added to projected mobile source CO emissions to arrive at a motor vehicle emissions budget to be used for transportation conformity purposes. The safety margins, less one ton per day, were added to projected mobile source CO emissions for 2010, and 2020. The derivation and determination of safety margins and motor vehicle emissions budgets for the Missoula CO maintenance plan is further illustrated in Table V–1 below and in section 2.5.6, Table 2–7 of the maintenance plan:

TABLE V–1.—MOBILE SOURCES EMISSIONS, SAFETY MARGINS, AND MOTOR VEHICLE EMISSIONS BUDGETS IN TONS OF CO PER DAY (TPD)

Year	Mobile sources emissions (TPD)	Total emissions (TPD)	Math	Margin of safety (TPD)	Motor vehicle emissions budget (TPD)
2000	44.86	56.83	.....	N/A	44.86
2010	27.10	39.71	56.83–39.71 = 17.12 ..... 17.12 − 1 = 16.12 27.10+16.12 = 43.22	16.12	43.22
2020	22.98	36.14	56.83 − 36.14 = 20.69 .... 20.69 − 1 = 19.69 22.98+19.69 = 42.67	19.69	42.67

Note: N/A = Not Applicable.

Our analysis indicates that the above figures are consistent with maintenance of the CO NAAQS throughout the maintenance period. Therefore, we are approving the 44.86 tons per day budget for 2000, 43.22 tons per day budget for 2010, and 42.67 tons per day budget for 2020 for the Missoula area.

Pursuant to section 93.118(e)(4) of EPA's transportation conformity rule, as amended, EPA must determine the adequacy of submitted mobile source emissions budgets. EPA reviewed the Missoula CO maintenance plan budgets for adequacy using the criteria in 40 CFR 93.118(e)(4), and determined that the budgets were adequate for conformity purposes. EPA's adequacy determination was made in a letter to the MDEQ on May 4, 2006, and was announced in the **Federal Register** on June 1, 2006 (71 FR 31181). As a result of this adequacy finding, the budgets took effect for conformity determinations in the Missoula area on June 16, 2006. However, we are not bound by that determination in acting on the maintenance plan.[3]

VI. Consideration of Section 110(l) of the Clean Air Act

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. The Missoula CO maintenance plan will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA.

VII. Proposed Action

In this action, EPA is proposing approval of the request for redesignation from nonattainment to attainment for CO for the Missoula area, the Missoula area's maintenance plan, the 1993 PEI, the 1996 PEI, the year 2000 attainment inventory (which fulfills the 1999 PEI obligation), and the transportation conformity CO motor vehicle emission budgets of 44.86 tons per day for 2000, 43.22 tons per day for 2010, and 42.67 tons per day for 2020.

Submit your comments, identified by Docket ID No. EPA–R08–OAR–2006–0163, by one of the methods identified above at the front of this proposed rule. In deciding on our final action, we will consider your comments if they are received before May 25, 2007. EPA will

[3] In its adequacy determination, EPA listed and found adequate budgets for 2005, 2010, and 2021. The listed years should have been 2000, 2010, and 2020, consistent with our discussion above. Assuming we do not change this proposal in response to public comment, the final approved budgets will be for years 2000, 2010, and 2020.

address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

VIII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it proposes to approve a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 17, 2007.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

[FR Doc. E7–7900 Filed 4–24–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA–R03–OAR–2007–0254; FRL–8304–9]

State Operating Permits Program; Maryland; Revision to the Acid Rain Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the operating permit program revision submitted by the State of Maryland for the purpose of amending the Code of Maryland Administrative Regulations' (COMAR) incorporation by reference citations to ensure that future changes to the Federal Acid Rain program will continue to be incorporated into Maryland's regulations. In the Final Rules section of this **Federal Register**, EPA is approving the State's operating permit program revision submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by May 25, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0254 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: campbell.dave@epa.gov.*

C. *Mail:* EPA–R03–OAR–2007–0254, David Campbell, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–0254. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the

Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Paul Arnold, (215) 814–2194, or by e-mail at *arnold.paul@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: April 17, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7–7920 Filed 4–24–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 174 and 180

[EPA–HQ–OPP–2005–0117; FRL–7742–3]

Proposed Administrative Revisions to Plant-Incorporated Protectant Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to move existing active and inert ingredient plant-incorporated protectant tolerance exemptions from 40 CFR part 180 (Tolerances and Exemptions from Tolerances for Pesticide Chemicals in Food) to 40 CFR part 174 (Procedures and Requirements for Plant-Incorporated Protectants) subpart W (Tolerances and Tolerance Exemptions). EPA is also proposing some conforming changes to the text of the individual exemptions, so that they are consistent with part 174, as well as some minor technical corrections to the wording of certain individual exemptions. This action is administrative in nature and no substantive changes are intended. We are proposing these administrative revisions to plant-incorporated protectant tolerance exemptions to take into account the promulgation of 40 CFR part 174, 66 FR 37814, July 19, 2001.

DATES: Comments, identified by docket ID number EPA–HQ–OPP–2005–0117, must be received on or before May 25, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0117, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0117. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (BPPD) (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; fax number: (703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in [insert appropriate cite to either another unit in the preamble or a section in a rule]. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

In 2001, EPA published a final rule, establishing certain basic parameters of its regulatory program under FIFRA for a specific class of pesticide products—plant-incorporated protectants. (66 FR 37772, July 19, 2001). EPA defined these products as pesticidal substances, along with the genetic material necessary to produce them, when produced and used in living plants, As part of that rule, EPA changed the name of this type of pesticide from ''plant-pesticide'' to ''plant-incorporated protectant.'' EPA also established a new part in the Code of Federal Regulations (CFR) specifically for plant-incorporated protectants. In the same issue of the **Federal Register**, EPA established a blanket tolerance exemption for all residues of nucleic acids that are part of a plant-incorporated protectant. (66 FR 37817, July 19, 2001). See 40 CFR 174.475.

In this notice, the Agency is proposing to make minor technical changes to conform the wording of certain individual tolerance exemptions with the above regulations.

This action is being proposed under sections 408 (e)(1)(B) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a (e)(1)(B).

Section 408(e)(1)(B)provides that the Administrator may issue a regulation modifying an exemption of a pesticide chemical residue from the requirement of a tolerance. 21 U.S.C. 346a (e)(1)(B). Because EPA is making no substantive modifications to the tolerance exemptions, the Agency has not made separate findings regarding the safety of the individual exemptions. EPA believes that the safety standard is applicable only where the Agency takes affirmative action to either substantively modify the tolerance exemption, or has reviewed the tolerance exemption and determined to leave it in effect. EPA is taking neither action in this notice, but is merely making technical modifications to conform the wording of the individual exemptions to wording that is consistent with the surrounding regulations.

A. What Action is the Agency Taking?

In 2001, EPA published a final rule, establishing certain basic parameters of its regulatory program under FIFRA for a specific class of pesticide products—plant-incorporated protectants. (66 FR 37772, July 19, 2001). EPA defined these products as pesticidal substances, along with the genetic material necessary to produce them, when produced and used in living plants, As part of that rule, EPA changed the name of this type of pesticide from ''plant-pesticide'' to ''plant-incorporated protectant.'' EPA also established a new part in the Code of Federal Regulations (CFR) specifically for plant-incorporated protectants. In the same issue of the **Federal Register**, EPA established a blanket tolerance exemption for all residues of nucleic acids that are part of a plant-incorporated protectant. (66 FR 37817, July 19, 2001). See 40 CFR 174.475.

In this notice, the Agency is proposing to make minor technical changes to conform the wording of certain individual tolerance exemptions with the above regulations.

The Agency is proposing to move the following tolerance exemptions listed under 40 CFR part 180 (Tolerances and Exemptions from Tolerances for Pesticide Chemicals in Food) to 40 CFR part 174 in order to consolidate all plant-incorporated protectant specific regulations in the same part.

Old Section	Redesignated as New section
180.1134	174.521
180.1147	174.509
180.1151	174.522
180.1155	174.510
180.1173	174.511
180.1174	174.523
180.1182	174.512
180.1183	174.513
180.1184	174.514
180.1185	174.515

Old Section	Redesignated as New section
180.1186	174.516
180.1190	174.524
180.1192	174.517
180.1214	174.518
180.1215	174.519
180.1216	174.525
180.1217	174.520
180.1249	174.526
180.1252	174.527

The Agency is also proposing to make some conforming changes to the wording of the exemptions, so that they are consistent with the provisions already in part 174. These changes consist of revising the term ''plant-pesticides'' in these exemptions to ''plant-incorporated protectants'' and changing the term ''vegetative insecticidal protein'' to the more broad term ''plant-incorporated protectant.''

Further, for these exemptions, as well as those found under 40 CFR 174.452, 174.453, 174.454, 174.455, 174.456, 174.457, and 174.458 (proposed to be redesignated as §§ 174.501, 174.502, 174.503, 174.504, 174.505, 174.506, and 174.528, respectively) EPA is also proposing to delete the references to the ''genetic material necessary for its production'' and ''regulatory regions,'' as well as the definitions of these terms, from individual tolerance exemptions. As noted in Unit II.A., EPA established a blanket tolerance exemption for nucleic acids, which includes the residues of genetic material necessary for the production of pesticidal substances in living plants, and residues of the genetic material necessary to produce any inert ingredient. See 40 CFR 174.475 (proposed to be redesignated as § 174.507). Retaining the references to the genetic material necessary for the production of the individual substances, and to regulatory regions in the text of the individual exemptions would be wholly duplicative of 40 CFR 174.475, and has the potential to cause confusion as to the intended scope of that provision. Accordingly, the Agency is removing these references. These deletions will in no way affect the legal status of such residues, given the provisions at 40 CFR 174.475.

Similarly, inclusion of the definitions of these terms in the individual exemptions becomes unnecessary once the exemptions are moved to part 174, as the terms are defined at § 174.3, which is generally applicable to all regulations contained in part 174. Moreover, the wording of the definitions varies slightly between some of the individual tolerance exemptions. While the Agency does not believe that there is any substantive difference between the different formulations, to avoid any confusion, EPA has chosen to delete the definitions from the individual tolerance exemptions. The deletion of these definitions from the individual tolerance exemptions will in no way affect the legal status of the residues exempted.

Further, for these exemptions and for 40 CFR 174.451 *Scope and Purpose*, (proposed to be redesignated as § 174.500) EPA is proposing to change the terms ''plant raw agricultural commodities,'' ''Raw agricultural commodities,'' ''raw agricultural commodities, in food, and in animal feeds,'' ''plant RACs,'' and ''plant commodities'' to read ''food commodities.'' While the Agency does not believe that there is any substantive difference between the different formulations, to avoid any confusion, EPA is proposing to use the one term ''food commodities.'' This change will in no way affect the legal status of the residues exempted.

EPA is proposing to change the term ''delta-endotoxin'' to ''Cry protein'' and to remove any subspecies designations for *Bacillus thuringiensis* PIPs. The terms ''delta-endotoxin'' and ''Cry protein'' are redundant. While the Agency does not believe that there is any substantive difference between these different formulations, to avoid any confusion, EPA has chosen to use the one term ''Cry protein'' without a subspecies designation. This change will in no way affect the legal status of the residues exempted.

EPA is proposing to add the term ''enzyme'' to descriptions of current PIP inert ingredients to clarify the function of these proteins and make classification easier for the layman. While the Agency does not believe that there is any substantive difference between these and the current naming formulations, to clarify the function of these proteins and make classification easier for the layman, EPA has chosen to add the term ''enzyme.'' This change will in no way affect the legal status of the residues exempted.

EPA is proposing to update *Bacillus thuringiensis* derived plant-incorporated protectant exemptions to conform to updated nomenclature as determined by the Bacillus thuringiensis Pesticidal Crystal Proteins Nomenclature Committee, a non-governmental scientific committee, *http://www.biols.susx.ac.uk/home/Neil__Crickmore/Bt/*. The changes will standardize the tolerance exemption descriptions by listing the ''residues of'' portion of the exemption first and by listing field corn, sweet corn, and popcorn as corn; corn, field; corn, sweet; and corn, pop. Those changes will in no way affect the legal status of the residues exempted.

EPA is proposing to redesignate § 180.1183, *Potato Leaf Roll Virus Resistance Gene (also known as orf1/orf2 gene) and the genetic material necessary for its production*, as § 174.513 and to add language to the exemption to clarify that residues in or on all food commodities are covered under this regulation. The phrase ''in or on all raw agricultural commodities'' was inadvertently excluded from the regulatory text of this exemption. However, the preamble to the rule clearly stated the Agency's intention to exempt residues of this product in or on all raw agricultural commodities. See 62 FR 43650, August 15, 1997. In addition, EPA's findings and supporting analyses concerning the safety of these residues addressed residues in or on all raw agricultural commodities. The inclusion of the phrase ''all food commodities'' in the individual tolerance exemption will in no way affect the legal status of the residues covered by the regulation.

Finally, EPA proposing to redesignate § 180.1174, *CP4 Enolpyruvylshikimate-3-phosphate (CP4 EPSPS) and the genetic material necessary for its production in all plants*, as § 174.523 and to add language to the exemption to clarify that this PIP inert ingredient is a synthase. The word ''synthase'' corresponds to the last ''S'' in ''CP4 EPSPS'' and was inadvertently excluded from the exemption. However, the proposed rule clearly stated ''synthase'' in describing the ingredient. See 60 FR 54689, October 25, 1995. The inclusion of the phrase ''synthase'' in the individual tolerance exemption will in no way affect the legal status of the residues covered by the regulation.

The specific tolerance exemptions EPA is proposing to move to part 174, as they currently appear in the CFR, follow immediately below. The proposed revised tolerance language appears at the end of the document, as proposed regulatory text. While EPA believes that it has accurately transferred each of the tolerance exemptions included in this proposed rule, the Agency would appreciate readers notifying EPA of discrepancies, omissions or technical problems by submitting them to the address or e-mail

address under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's Authority for Taking this Action?

This action is being proposed under sections 408 (e)(1)(B) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a (e)(1)(B).

Section 408(e)(1)(B) provides that the Administrator may issue a regulation modifying an exemption of a pesticide chemical residue from the requirement of a tolerance, 21 U.S.C. 346a (e)(1)(B).

III. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, 58 FR 51735, October 4, 1993, the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities since this action is administrative in nature and no substantive changes are being made.

IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 174

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements, Plant-incorporated protectants.

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 12, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, Title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a, and 371.

2. In the following table, the sections in the first column are transferred to 40 CFR part 174, subpart W and redesignated as the sections in the second column.

Old Section	Redesignated as New section
180.1134	174.521
180.1147	174.509
180.1151	174.522
180.1155	174.510
180.1173	174.511
180.1174	174.523
180.1182	174.512
180.1183	174.513
180.1184	174.514
180.1185	174.515
180.1186	174.516
180.1190	174.524
180.1192	174.517
180.1214	174.518
180.1215	174.519
180.1216	174.525
180.1217	174.520
180.1249	174.526
180.1252	174.527

§§ 180.1227 and 180.1242 [Removed]

3. Section 180.1227 and 180.1242 are removed.

PART 174—[AMENDED]

4. The authority citation for part 174 continues to read as follows:

Authority: 7 U.S.C. 136 - 136y; 21 U.S.C. 346a and 371.

§ 174.21 [Amended]

5. Section 174.21 is amended as follows:

i. In paragraph (b) by revising the reference ''§§ 174.475 through 174.479'' to read ''§§ 174.507 through 174.508.''

ii. In paragraph (c) by revising the reference ''§§ 174.485 through 174.490'' to read ''§ 174.705.''

§§ 174.475 and 174.479 [Redesignated as §§ 174.507 and 174.508]

6. Sections 174.475 and 174.479 are redesignated as §§ 174.507 and 174.508, respectively.

§§ 174.480 and 174.485 [Redesignated as §§ 174.700 and 174.705]

7. Sections 174.480 and 174.485 are redesignated as § 174.700 and § 174.705, respectively and remain in subpart X.

8. Sections 174.451, 174.452, 174.453, 174.454, 174.455, 174.456, and 174.457 are redesignated as §§ 174.500, 174.501, 174,502, 174.503, 174.504, 174.505, and 174.506, respectively, and revised to read as follows:

§ 174.500 Scope and purpose.

This subpart lists the tolerances and exemptions from the requirement of a tolerance for residues of plant-incorporated protectants in or on food commodities.

§ 174.501 Bacillus thuringiensis VIP3A protein; temporary exemption from the requirement of a tolerance.

Residue of *Bacillus thuringiensis* VIP3A protein are temporarily exempt from the requirement of a tolerance when used as a plant-incorporated protectant in cotton seed, cotton oil, cotton meal, cotton hay, cotton hulls, cotton forage, and cotton gin byproducts. This temporary exemption from the requirement of a tolerance expires May 1, 2007.

§ 174.502 Bacillus thuringiensis Cry1A.105 protein in corn; temporary exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry1A.105 protein in corn are exempt from the requirement of a tolerance when used as plant-incorporated protectant in the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop. This temporary exemption from the requirement of a tolerance will permit the use of the food commodities in this paragraph when treated in accordance with the provisions of the experimental use permit 524–EUP–97 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136). This temporary exemption from the requirement of a tolerance expires and is revoked June 30, 2009; however, if the experimental use permit is revoked, or if any experience with or scientific data on this pesticide indicate that the tolerance is not safe, this temporary exemption from the requirement of a tolerance may be revoked at any time.

§ 174.503 Bacillus thuringiensis Cry2Ab2 protein in corn; temporary exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry2Ab2 protein in corn are exempt from the requirement of a tolerance when used as plant-incorporated protectant in the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop. This temporary exemption from the requirement of a tolerance will permit the use of the food commodities in this paragraph when treated in accordance with the provisions of the experimental use permit 524–EUP–97 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136). This temporary exemption from the requirement of a tolerance expires and is revoked June 30, 2009; however, if the experimental use permit is revoked, or if any experience with or scientific data on this pesticide indicate that the tolerance is not safe, this temporary exemption from the requirement of a tolerance may be revoked at any time.

§ 174.504 Bacillus thuringiensis Cry1F protein in cotton; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry1F protein in cotton are exempt from the requirement of a tolerance when used as a plant-incorporated protectant in food and feed commodities of cotton.

§ 174.505 Bacillus thuringiensis modified Cry3A protein (mCry3A) in corn; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* modified Cry3A protein (mCry3A) in corn are exempt from the requirement of a tolerance when used as plant-incorporated protectant in the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop.

§ 174.506 Bacillus thuringiensis Cry34Ab1 and Cry35Ab1 proteins in corn; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins in corn are exempted from the requirement of a tolerance when used as plant-incorporated protectants in the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop.

9. Newly redesignated §§ 174.509 through 174.527 are revised to read as follows:

§ 174.509 Bacillus thuringiensis Cry3A protein; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry3A protein are exempted from the requirement of a tolerance when used as a plant-incorporated protectant in potatoes.

§ 174.510 Bacillus thuringiensis Cry1Ac protein in all plants; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry1Ac protein in all plants are exempt from the requirement of a tolerance when used as plant-incorporated protectants in all food commodities.

§ 174.511 Bacillus thuringiensis Cry1Ab protein in all plants; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry1Ab protein in all plants are exempt from the requirement of a tolerance when used as plant-incorporated protectants in all food commodities.

§ 174.512 Coat Protein of Potato Virus Y; exemption from the requirement of a tolerance.

Residues of Coat Protein of Potato Virus Y are exempt from the requirement of a tolerance when used as a plant-incorporated protectant in or on all food commodities.

§ 174.513 Potato Leaf Roll Virus Resistance Gene (also known as orf1/orf2 gene); exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the plant-incorporated protectant Potato Leaf Roll Virus Resistance Gene (also known as orf1/orf2 gene) in or on all food commodities.

§ 174.514 Coat Protein of Watermelon Mosaic Virus-2 and Zucchini Yellow Mosaic Virus; exemption from the requirement for a tolerance.

Residues of Coat Protein of Watermelon Mosaic Virus-2 and Zucchini Yellow Mosaic Virus are exempt from the requirement of a tolerance when used as a plant-incorporated protectant in or on all food commodities.

§ 174.515 Coat Protein of Papaya Ringspot Virus; exemption from the requirement of a tolerance.

Residues of Coat Protein of Papaya Ringspot Virus are exempt from the requirement of a tolerance when used as a plant-incorporated protectant in or on all food commodities.

§ 174.516 Coat protein of cucumber mosaic virus; exemption from the requirement of a tolerance.

Residues of Coat Protein of Cucumber Mosaic Virus are exempt from the requirement of a tolerance when used as a plant-incorporated protectant in or on all food commodities.

§ 174.517 Bacillus thuringiensis Cry9C protein in corn; exemption from the requirement of a tolerance.

The plant-incorporated protectant *Bacillus thuringiensis* Cry9C protein in corn is exempted from the requirement of a tolerance for residues, only in corn used for feed; as well as in meat, poultry, milk, or eggs resulting from animals fed such feed.

§ 174.518 Bacillus thuringiensis Cry3Bb1 protein in corn; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry3Bb1 protein in corn are exempt from the requirement of a tolerance when used as plant-incorporated protectants in the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop.

§ 174.519 Bacillus thuringiensis Cry2Ab2 protein in cotton; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry2Ab2 protein in cotton is exempt from the requirement of a tolerance when used as a plant-incorporated protectant in the food and feed commodities, cotton seed, cotton oil, cotton meal, cotton hay, cotton hulls, cotton forage, and cotton gin byproducts.

§ 174.520 Bacillus thuringiensis Cry1F protein in corn; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry1F protein in corn are exempt from the requirement of a tolerance when used as plant-incorporated protectants in the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop.

§ 174.521 Neomycin phosphotransferase II; exemption from the requirement of a tolerance.

Residues of the neomycin phosphotransferase II (NPTII) enzyme are exempted from the requirement of a tolerance in all food commodities when used as a plant-incorporated protectant inert ingredient.

§ 174.522 Phosphinothricin Acetyltransferase (PAT); exemption from the requirement of a tolerance.

Residues of the Phosphinothricin Acetyltransferase (PAT) enzyme are exempt from the requirement of a tolerance when used as plant-incorporated protectant inert ingredients in all food commodities.

§ 174.523 CP4 Enolpyruvylshikimate-3-phosphate (CP4 EPSPS) synthase in all plants; exemption from the requirement of a tolerance.

Residues of the CP4 Enolpyruvylshikimate-3-phosphate (CP4 EPSPS) synthase enzyme in all plants are exempt from the requirement of a tolerance when used as plant-incorporated protectant inert ingredients in all food commodities.

§ 174.524 Glyphosate Oxidoreductase GOX or GOXv247 in all plants; exemption from the requirement of a tolerance.

Residues of the Glyphosate Oxidoreductase GOX or GOXv247 enzyme in all plants are exempt from the requirement of a tolerance when used as plant-incorporated protectant inert ingredients in all food commodities.

§ 174.525 E. coli B-D-glucuronidase enzyme as a plant-incorporated protectant inert ingredient; exemption from the requirement of a tolerance.

Residues of *E. coli* B-D-glucuronidase enzyme are exempt from the requirement of a tolerance when used as a plant-incorporated protectant inert ingredient in all food commodities.

§ 174.526 Hygromycin B phosphotransferase (APH4) marker protein in all plants; exemption from the requirement of a tolerance.

Residues of the Hygromycin B phosphotransferase (APH4) enzyme in all plants are exempt from the requirement of a tolerance when used as a plant-incorporated protectant inert ingredient in cotton.

§ 174.527 Phosphomannose isomerase in all plants; exemption from the requirement of a tolerance.

Residues of the phosphomannose isomerase (PMI) enzyme in plants are exempt from the requirement of a tolerance when used as plant-incorporated protectant inert ingredients in all food commodities.

10. Section 174.458 is redesignated as § 174.528 and revised to read as follows:

§ 174.528 Bacillus thuringiensis Vip3Aa20 protein; temporary exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Vip3Aa20 protein in corn are temporarily exempt from the requirement of a tolerance when used as a plant-incorporated protectant in the food and feed commodities of corn; corn, field; corn, sweet; corn, pop. This temporary exemption from the requirement of tolerance will permit the use of the food commodities in this paragraph when treated in accordance with the provisions of the experimental use permit 67979–EUP–6, which is being issued in accordance with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136). This temporary exemption from the requirement of a tolerance expires and is revoked March 31, 2008; however, if the experimental use permit is revoked, or if any experience with or scientific data on this pesticide indicate that the temporary tolerance exemption is not safe, this temporary exemption from the requirement of a tolerance may be revoked at any time.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[WT Docket No. 07–54; RM–11043; FCC 07–38]

Amendment of the Commission's Rules To Modify Antenna Requirements for the 10.7–11.7 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, we seek comment on modifying the Commission's Rules to permit the installation of smaller antennas by Fixed Service (FS) operators in response to a petition for rulemaking filed by FiberTower, Inc. (FiberTower). In particular, we seek comment on whether these modifications would serve the public interest by facilitating the efficient use of the 11 GHz band while protecting other users in the band from interference due to the use of smaller antennas.

DATES: Comments must be filed on or before May 25, 2007, and reply comments must be filed on or before June 11, 2007.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. You may submit comments, identified by WT Docket No. 07–54, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Brian Wondrack at 202–418–2487.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of*

Proposed Rule Making, released March 27, 2007. The complete text of this document, including attachments and related Commission documents, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of the *Notice of Proposed Rulemaking* and related Commission documents may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site *http://www.BCPIWEB.com.* When ordering documents from BCPI please provide the appropriate FCC document number, for example, FCC 07–38. The *Notice of Proposed Rulemaking* is available on the Commission's Web site: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–07–38A1.doc.*

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

I. Summary of Notice of Proposed Rulemaking

1. In the *Notice of Proposed Rule Making* (*NPRM*), the Commission, in response to a petition filed by FiberTower, Inc., initiates a rulemaking proceeding to establish a full record and determine whether to adopt modifications to part 101 of the Commission's Rules to permit the installation of smaller antennas by Fixed Service (FS) operators in the 10.7–11.7 GHz (11 GHz) band. Specifically, the *NPRM* seeks comment on whether the proposed rule modifications to the antenna standards and coordination procedures in part 101 serve the public interest by facilitating the efficient use of the 11 GHz band while protecting other users in the band from interference due to the use of smaller antennas.

2. *Background.* The 11 GHz band is allocated within the United States on a co-primary basis to the Fixed Services (FS), licensed under part 101 of the Commission's Rules, 47 CFR part 101, and to the Fixed Satellite Service (FSS), licensed under part 25 of the Commission's Rules, 47 CFR part 25. Specifically, in the United States, the 11 GHz band is used by the FS for Local Television Transmission Service (LTTS), Private Operational Fixed Point to Point Microwave, and Common Carrier Fixed Point-to-Point Microwave operations. Although the 11 GHz band is allocated internationally for FSS on a primary basis, the use of the FSS downlink band at 11 GHz is limited, within the United States, to international systems, *i.e.*, other than domestic systems, pursuant to 47 CFR 2.106 NG104. The Commission's purpose in adopting such a restriction was to protect incumbent microwave operations and licensees in the 11 GHz band.

3. On July 14, 2004, FiberTower filed a petition for rulemaking proposing amendments to the antenna standards and coordination procedures governing the use microwave antennas in the 11 GHz band in order to maximize the efficient use of the spectrum. The antenna standards, which are set-forth in 47 CFR 101.115(b), are designed to maximize the use of microwave spectrum, including the 11 GHz band, while avoiding interference between operators and other users in the band. FiberTower proposed changes to those parameters that would permit the use of FS antennas with reduced mainbeam gain, increased beamwidth, and modified sidelobe suppression in the 11 GHz band, thereby effectively permitting the use of 0.61 meter antennas as an optional alternative to the 1.22 meter antennas that meet the existing technical parameters for FS in the 11 GHz band. The coordination procedures, which are set-forth in 47 CFR 101.103, exist to establish interference standards applicable to the operation of FS antennas in the 11 GHz band. FiberTower proposed amendments to the coordination procedures to protect other users in the 11 GHz band from experiencing any greater interference from a FS licensee's use of a 0.61 meter antenna than would be experienced if the FS licensee were using a 1.22 meter antenna.

4. *Need for the Rule Changes.* In the *NPRM*, the Commission concludes that the public interest would be served by initiating a proceeding to consider the possibility of modifying the Commission's Rules to permit the installation of 0.61 meter antennas in the 11 GHz band. The Commission finds that review the technical specifications for the 11 GHz band is appropriate at this time. The Commission notes that the specifications that limit the size of

FS antennas in the 11 GHz band reflect the technical sophistication of the communications equipment and the needs of the various users of the band at the time that the rules were adopted. The Commission further notes that it adopted similar technical specifications that effectively limited the size of antennas used in other bands, including those used by satellite, but has since reconsidered many of those antenna specifications in light of the technological evolution of communications equipment.

5. The Commission tentatively concludes that the shared nature of the 11 GHz band does not preclude the Commission from facilitating the efficient use of the 11 GHz band by permitting FS users to erect 0.61 meter antennas while appropriately protecting other users in the band from harmful interference associated with the use of smaller antennas. The Commission explained in the *NPRM* that, although the 11 GHz band is shared on a co-primary basis with the FSS, domestic use of the 11 GHz band by the FSS has been limited, to date, because the Commission has sought to protect the use and expansion of terrestrial microwave services within the band. The Commission emphasized that its Rules explicitly limit satellite use of the 11 GHz band to international systems and that the Commission's intent and effect in adopting footnote NG104 was to limit the expansion of FSS in the 11 GHz band and protect the future use of the band for FS. However, the Commission invites comments on its tentative conclusion.

6. *Antenna Standards.* Antenna standards are designed to maximize the use of microwave spectrum, including the 11 GHz band, while avoiding interference between operators and other users in the band. The Commission recognizes that the proposed use of smaller, lower-gain antennas will result in more radio frequency energy being transmitted in directions away from the actual point-to-point link on account of the relaxed radiation suppression on angles away from the centerline of the main beam as well as because users of 0.61 meter antennas will have to transmit with approximately 4.5 dB more power in order to overcome the reduced main beam gain. The Commission seeks to ensure that any proposed changes to the Commission's Rules appropriately protect other users in the band from interference due to the operation of 0.61 meter antennas. The *NPRM* seeks comment on whether the use of 0.61 meter antennas by FS licensees in the 11 GHz band will adversely affect other users in the band by increasing the risk of interference. The Commission seeks specific comment on the ''White Paper Report on Proposed Changes to Small Antenna Standards in the 11 GHz Band'' submitted by Alcatel in support of the FiberTower Petition because it suggests that the impact of deploying 0.61 meter antennas in the 11 GHz band will be minimal. The Commission also requests that parties comment on the extent to which the rules proposed by FiberTower mitigate or obviate interference concerns, or propose additional options to mitigate interference, such as a power or EIRP tradeoff.

7. In addition to seeking comments on interference issues generally, the Commission also seeks comment on specific interference issues. For example, the Commission inquires whether an earth station operator could face a situation in which it experiences harmful interference as a result of the aggregate effect of several nearby FS antennas, even if each antenna standing alone would not create a problem. The Commission asks parties to comment on whether the use of 0.61 meter antennas by FS licensees in the 11 GHz band will adversely affect other users in the band by increasing the risk of aggregate interference, especially to earth stations. The Commission invites parties to suggest ways to avoid or mitigate instances of aggregate interference, if they were to occur. The *NPRM* specifically suggests that parties discuss the sufficiency of existing industry practices, coordination requirements, and interference criteria to address the possibility or occurrence of aggregate interference.

8. The Commission also seeks comment on whether the size of the equipment and the technical characteristics of the antenna patterns make the 0.61 meter antenna more difficult to point accurately. The Commission specifically asks parties to address whether the use of smaller antennas in the 11 GHz band significantly increases the risk of interference to other users in the band due to accuracy errors in pointing the 0.61 meter antennas. The Commission therefore invites parties to discuss the likelihood, effect, and addressability of pointing errors and to comment on how the Commission has approached similar issues concerning interference due to pointing errors in the past.

9. *Coordination Procedures.* Coordination procedures, set-forth in 47 CFR 101.103, exist to establish interference standards applicable to the operation of FS antennas in the 11 GHz band. The FiberTower Petition proposes amendments to the coordination requirements in 47 CFR 101.103 to protect other users in the 11 GHz band from experiencing any greater interference from the use of a 0.61 meter antenna than would be experienced by the use of a 1.22 meter antenna. Specifically, pursuant to the proposed amendments, if either an FS applicant that is attempting to frequency coordinate a 1.22 meter (or larger) antenna for use in the 11 GHz band or an FSS applicant for an earth station in the 11 GHz band predicts received interference from an FS licensee or prior applicant using a 0.61 meter antenna in the 11 GHz band, it may require the FS licensee or prior applicant using the 0.61 meter antenna to reduce predicted interference to levels no higher than would be predicted from the use of a 1.22 meter antenna. In addition, the proposed amendments only permit the FS licensee or prior applicant using a 0.61 meter antenna in the 11 GHz band to object to a prior coordination notice if it would have actual grounds to object to predicted interference if it were using a 1.22 meter antenna at the same site, polarization, frequency, bandwidth, and orientation.

10. The Commission seeks comment on whether these amendments strike the appropriate balance between efficient spectrum use and interference protection in the 11 GHz band and requests that parties address precedent where the Commission has amended technical rules to permit the use of smaller antennas. The Commission invites parties to comment on whether the Commission's rules and industry practices are sufficient to allow parties to resolve instances where 0.61 meter antennas cause more interference than otherwise would be caused by 1.22 meter antennas.

11. Accordingly, the Commission seeks comment on whether the proposed amendments to the part 101 antenna standards and coordination requirements would facilitate the efficient use of the 11 GHz band by affording FS licensees the flexibility to install 0.61 meter antennas in the 11 GHz band while appropriately protecting other users in the band from interference. The Commission also seeks comment on whether these changes will facilitate a range of fixed microwave applications—including those that support third generation mobile services—that are not currently being accommodated in the 11 GHz band under the existing rules governing use of the band.

II. Initial Regulatory Flexibility Analysis

12. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (*NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided in paragraph 29 of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

13. In this *NPRM*, we seek comment on a petition for rulemaking filed by FiberTower, Inc. (FiberTower) on July 14, 2004. The FiberTower Petition requests that the Commission initiate a rulemaking to amend the technical parameters in §§ 101.103 and 101.115 of the Commission's rules that establish interference protection for operators in the 10.7–11.7 GHz (11 GHz) band in order to permit the use of 0.61 meter (''two-foot'') antennas as an optional alternative to the 1.22 meter (''four-foot'') antennas that meet the existing technical parameters for Fixed Microwave Service in the 11 GHz band. Specifically, the FiberTower Petition proposes changes to the technical parameters in § 101.115 of the Commission's rules to permit the use of Fixed Service (FS) antennas with reduced mainbeam gain, increased beamwidth, and modified sidelobe suppression in the 11 GHz band. The FiberTower Petition also proposes amendments to § 101.103 of the Commission's rules to protect other users in the 11 GHz band from experiencing any greater interference from the use of a 0.61 meter antenna than would be experienced by the use of a 1.22 meter antenna.

14. We seek comment in this *NPRM* on modifying the Commission's rules to permit the installation of 0.61 meter antennas in the 11 GHz band, while appropriately protecting other users in the band. Such action could serve the public interest by facilitating the efficient use of the 11 GHz band. We tentatively conclude that the shared nature of the 11 GHz band does not preclude the Commission from facilitating the efficient use of the 11 GHz band by permitting FS users to erect 0.61 meter antennas. However, we also wish to ensure that any proposed changes to the Commission's rules appropriately protect other users in the band from increased interference due to the use of 0.61 meter antennas. To this end, we seek comments on particular interference concerns as well as on the more general issue of whether the use of 0.61 meter antennas by FS licensees in the 11 GHz band will adversely affect other users in the band by increasing the likelihood of interference.

B. Legal Basis

15. The proposed action is authorized pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332 and 333 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, and 333.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

16. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

17. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

18. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 36,708 common carrier fixed licensees and 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of the FRFA, we will use the SBA's definition applicable to Cellular and other Wireless Telecommunications companies—*i.e.*, an entity with no more than 1,500 persons. Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. We note that the number of firms does not necessarily track the number of licensees. We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

19. *Satellite Telecommunications and Other Telecommunications.* There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under both categories, such a business is small if it has $13.5 million or less in average annual receipts.

20. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small

entities that might be affected by our action.

21. The second category of Other Telecommunications ''comprises establishments primarily engaged in (1) Providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 259 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

22. *Space Stations (Geostationary).* Commission records reveal that there are 15 space station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of geostationary space stations that would constitute a small business under the SBA definition cited above, or apply any rules providing special consideration for Space Station (Geostationary) licensees that are small businesses.

23. *Fixed Satellite Transmit/Receive Earth Stations.* Currently there are approximately 3,390 operational fixed-satellite transmit/receive earth stations authorized for use in the C- and Ku-bands. The Commission does not request or collect annual revenue information, and thus is unable to estimate the number of earth stations that would constitute a small business under the SBA definition.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

24. This *NPRM* proposes no new reporting or recordkeeping requirements. This *NPRM* proposes amendments to the Commission's rules to afford licensees in the Fixed Microwave Services (FS) with the flexibility to use a 0.61 meter antenna in the 11 GHz band as an optional alternative to the 1.22 meter antenna that meets the existing technical parameters for FS in the 11 GHz band. The proposed amendments would apply equally to large and small entities and benefit all FS licensees by reducing the burden of seeking individual waivers to permit the use of 0.61 meter antennas in the 11 GHz band. The Commission requests comment on how these proposed rules may be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

25. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof for small entities.

26. As noted above, this *NPRM* proposes rules to permit the use of 0.61 meter antennas as an optional alternative to the 1.22 meter antennas that meet the existing technical parameters for FS in the 11 GHz band. Because the proposed rules seek to provide FS licensees in the 11 GHz with additional flexibility, FS licensees retain the option of continuing to employ 1.22 meter antennas that meet the existing technical parameters for FS in the 11 GHz band. Thus, this proposed action would provide an additional option to all licensees, including small entity licensees. In this *NPRM*, we seek comment on this proposed action. Such action could serve the public interest by facilitating the efficient use of the 11 GHz band. The proposed rules could promote the efficient use of the spectrum and provide for a wide range of fixed microwave applications that are not currently being provided for in the 11 GHz band for financial, aesthetic, and regulatory reasons. The proposed rules could therefore open up economic opportunities to a variety of spectrum users, including small businesses. Indeed, a number of the commenting parties to support the proposed rules identify themselves as small businesses.

27. This *NPRM* seeks comments on particular interference concerns as well as on the more general issue of whether the use of 0.61 meter antennas by FS licensees in the 11 GHz band will adversely affect other users in the band by increasing the likelihood of interference. The Commission invites comment on any additional significant alternatives parties believe should be considered and on how the approach outlined in the *NPRM* will impact small entities. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

28. None.

III. Ordering Clauses

29. Pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332 and 333 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, that this Notice of Proposed Rulemaking is hereby ADOPTED.

30. *Notice is hereby given* of the proposed regulatory changes described in this Notice, and that comment is sought on these proposals.

31. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send *shall send* a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 101 as follows:

PART 101—FIXED MICROWAVE SERVICES

1. The authority citation for part 101 continues as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 101.103 is amended by adding a new paragraph (j) to read as follows:

§ 101.103 Frequency coordination procedures.

* * * * *

(j) *Coordination of small antennas in the 10.7–11.7 GHz band.*

(1) A licensee or prior applicant using an antenna smaller than 1.22 meters (4 feet) in diameter may object to a prior coordination notice only

(i) If it has actual grounds to object because of predicted interference, and

(ii) To the extent it would have grounds to object if it were using a 1.22 meter antenna at the same site, polarization, frequency, bandwidth, and orientation.

(2) A Fixed Service applicant attempting to frequency coordinate an antenna of 1.22 meters in diameter or larger, or an applicant for a Fixed Satellite Service earth station, that predicts received interference from a licensee or prior applicant using an antenna smaller than 1.22 meters in diameter, can require the licensee or prior applicant to reduce the predicted interference to levels no higher than would be predicted from antenna of 1.22 meters in diameter.

3. Section 101.115 is amended by revising the entry ''10,700 to 11,700 [5]'' to the table following paragraph (b)(2) to read as follows:

§ 101.115 Directional antennas.

(b) * * *

(2) * * *

Frequency (MHz)	Category	Maximum beam-width to 3 dB pts	Minimum antenna Gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
*	*		*	*		*	*		*	
10,700–11,700*	A	3.5	33.5	18	24	28	32	35	55	55
	B	3.5	33.5	17	24	28	32	35	40	45
*	*		*	*		*	*		*	

* * * * *

[FR Doc. E7–7796 Filed 4–24–07; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 72, No. 79

Wednesday, April 25, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request —Food Stamp Program, Form FNS–46, Issuance Reconciliation Report

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections.

DATES: Written comments must be received on or before June 25, 2007.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Mandy Briggs, Chief, Electronic Benefits Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Mandy Briggs at (703) 305–1863 or via e-mail to *BRDHQ-WEB@fns.usda.gov*.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 403.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Mandy Briggs, Chief, Electronic Benefits Transfer Branch at (703) 305–2523.

SUPPLEMENTARY INFORMATION:

Title: Issuance Reconciliation Report.

OMB Number: 0584–0080.

Form Number: FNS–46.

Expiration Date: December 31, 2007.

Type of Request: Revision of a currently approved collection.

Abstract: Section 7(d) of the Food Stamp Act of 1977, as amended, (the Act) (7 U.S.C.

2016(d), requires State agencies to report on their benefits issuance operations not less than monthly. Section 11(a) of the Act (7 U.S.C. 2020(a)) requires State agencies to assume responsibility for the issuance, control, and accountability of benefits.

Regulations at 7 CFR 274.4(a) and 274.4(b)(2) require State agencies to account for all issuance through the reconciliations process and to submit a report on this process using Form FNS–46, Issuance Reconciliation Report. These reports must be submitted to the Food and Nutrition Service (FNS) monthly and must reach FNS no later than 90 days following the end of each report month. The FNS–46 report reflects the total issuance, returns, and unauthorized issuance amounts resulting in the net Federal obligation.

The proposed revision to the information collection burden associated with Form FNS–46, Issuance Reconciliation Report, reflects a reduction because of the requirement in Section 7(i) of the Act, (7 U.S.C. 2016(i)) for State agencies to change from coupon to EBT systems. As States implemented their EBT systems, they generally reduced their issuance reconciliation points to a single location. Therefore, the number of respondents and responses declined as the number of States with EBT systems increased.

Respondents: State and local government employees or contractors.

Estimated Number of Respondents: 54.

Number of Responses per Respondent: 12.

Estimated Time per Response: 8 hours.

Estimated Total Annual Burden on Respondents: 5,184 hours.

Dated: April 17, 2007.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E7–7881 Filed 4–24–07; 8:45 am]

BILLING CODE 3410–30–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting—May 9, 2007—7 p.m.

In connection with its investigation into the cause of a November 22, 2006, explosion and fire at the CAI/Arnel manufacturing facility in Danvers, Massachusetts, the United States Chemical Safety and Hazard Investigation Board (CSB) announces that it will convene a community meeting on May 9, 2007 starting at 7 p.m. in the Grand Ballroom at the Sheraton Ferncroft Resort, 50 Ferncroft Road, Danvers, MA 01923.

At the meeting CSB staff will present to the Board the preliminary results of their investigation into this incident. There will be a public comment period after the investigators' presentation.

During the early morning hours of November 22, a powerful explosion destroyed the CAI/Arnel manufacturing facility in Danvers, Massachusetts. Scores of nearby homes and businesses were damaged, some beyond repair. A number of residents were hospitalized. There were no injuries in the plant, which was unoccupied at the time.

After the staff presentation, the Board will allow a time for public comment. Following the conclusion of the public comment period, the Board will consider whether the preliminary facts presented necessitate any recommendations prior to the final completion of the Board's investigative report.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings should be considered final.

Only after the Board has considered a final staff presentation and approved the staff report next year will there be an approved final record of this incident.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202) 261–7600, or visit our Web site at: *http://www.csb.gov*.

Christopher W. Warner,

General Counsel.

[FR Doc. 07–2064 Filed 4–23–07; 2:56 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Application for NATO International Competitive Bidding.

Agency Form Number: BIS–4023P.

OMB Approval Number: 0694–0128.

Type of Request: Regular submission.

Burden: 40 hours.

Average Time Per Response: 1 hour.

Number of Respondents: 40.

Needs and Uses: All U.S. firms desiring to participate in the NATO International Competitive Bidding (ICB) process under the NATO Security Investment Program (NSIP) must be certified as technically, financially and professionally competent. The U.S. Department of Commerce is the agency that provides the Statement of Eligibility that certifies these firms. Any such firm seeking certification is required to submit a completed Form BIS–4023P along with a current annual financial report and a résumé of past projects in order to become certified and placed on the Consolidated List of Eligible Bidders. The information provided on the form is used to certify the U.S. firm for placement on the bidders' list database.

Affected Public: Individuals or households, business or other for-profit organizations.

Respondent's Obligation: Required to retain or obtain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, e-mail address, *David_Rostker@omb.eop.gov*, or Fax number, (202) 395–7285.

Dated: April 19, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–7828 Filed 4–24–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: International Import Certificate.

Agency Form Number: BIS–645P.

OMB Approval Number: 0694–0017.

Type of Request: Regular submission.

Burden: 91 hours.

Average Time Per Response: 16 minutes.

Number of Respondents: 340.

Needs and Uses: The United States and several other countries have undertaken to increase the effectiveness of their respective controls over international trade in strategic commodities by means of an Import Certificate procedure. For the U.S. importer, this procedure provides that, where required by the exporting country with respect to a specific transaction, the importer certifies to the U.S. Government that he/she will import specific commodities into the United States and will not reexport such commodities except in accordance with the export control regulations of the United States. The U.S. Government, in turn, certifies that such representations have been made.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Respondent's Obligation: Required to retain or obtain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, e-mail address, *David_Rostker@omb.eop.gov*, or Fax number, (202) 395–7285.

Dated: April 19, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–7830 Filed 4–24–07; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Management and Oversight of the National Estuarine Research Reserve System.

Form Number(s): None.

OMB Approval Number: 0648–0121.

Type of Request: Regular submission.

Burden Hours: 18,040.

Number of Respondents: 29.

Average Hours Per Response: Applications (additional required documents), 1 hour; annual reports, 5 hours; site nominations, site profiles and management plans, 2,000 hours.

Needs and Uses: The National Estuarine Research Reserve System consists of carefully-selected estuarine areas of the U.S. that are designated, preserved, and managed for research and educational purposes. Information is needed from states to review proposed designations. The sites selected must develop management plans and site profiles. Grantees must submit annual work plans/reports.

Affected Public: Not-for-profit institutions; State, Local or Tribal Government.

Frequency: Annual and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: April 19, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–7831 Filed 4–24–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Proposed Information Collection; Comment Request; Complaint of Discrimination Based on Sexual Orientation Against the U.S. Department of Commerce

AGENCY: Office of the Secretary, Office of Civil Rights.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 25, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Kathryn Anderson, 202–482–3680, or *KAnderson@doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Pursuant to Executive Order 11478 and Department of Commerce Administrative Order (DAO) 215–11, an employee or applicant for employment with the Department of Commerce who alleges that he or she has been subjected to discriminatory treatment based on sexual orientation by the Department of Commerce or one of its subagencies, must submit a signed statement that is sufficiently precise to identify the actions or practices that form the basis of the complaint.

The complainant is also required to provide an address and phone number where the complainant or his or her representative may be contacted. Through use of this standardized form, the Office of Civil Rights proposes to collect the information required by the Executive Order and DAO in a uniform manner that will increase the efficiency of complaint processing and trend analyses of complaint activity.

II. Method of Collection

A paper form, signed by the complainant or his or her designated representative, must be submitted by mail or delivery service, in person, or by facsimile transmission.

III. Data

OMB Number: None.

Form Number: CD–545.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 20.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 10.

Estimated Total Annual Cost to Public: $78.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 19, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–7833 Filed 4–24–07; 8:45 am]

BILLING CODE 3510–BP–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Proposed Information Collection; Comment Request; Complaint of Discrimination Against the U.S. Department of Commerce

AGENCY: Office of the Secretary, Office of Civil Rights.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 25, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Kathryn Anderson, 202–482–3680, or *KAnderson@doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Equal Employment Opportunity Commission (EEOC) regulations at 29 CFR 1614.106 require that a Federal employee or applicant for Federal employment alleging discrimination based on race, color, sex, national origin, religion, age, disability, or reprisal for protected activity must submit a signed statement that is sufficiently precise to identify the actions or practices that form the bases of the complaint. Although complainants are not required to use the proposed form to file their complaints, the Office of Civil Rights strongly encourages its use to ensure efficient case processing and trend analyses of

complaint activity. The proposed form is an update of a previously approved collection. The revisions update the room and fax numbers for the submission of complaints, make collection of the complainant's Social Security Number optional, clarify the information requested about the organizational and geographic location where the complaint arose, and provide space for complainants and representatives to supply e-mail addresses.

II. Method of Collection

A paper form, signed by the complainant or his or her designated representative, must be submitted by mail or delivery service, in person, or by facsimile transmission.

III. Data

OMB Number: 0690–0015.

Form Number: CD–498.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 400.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annual Cost to Public: $156.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 19, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–7834 Filed 4–24–07; 8:45 am]

BILLING CODE 3510–BP–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Proposed Information Collection; Comment Request; Application for Investment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 25, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or for copies of the information collection described in this notice should be directed to Kenneth M. Kukovich, EDA PRA Liaison, Office of Management Services, Economic Development Administration, Department of Commerce, HCHB Room 7227, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4965; e-mail: *kkukovich@eda.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

EDA's mission is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. EDA will fulfill its mission by fostering entrepreneurship, innovation and productivity through investments in infrastructure development, capacity building and business development in order to attract private capital investments and higher-skill, higher-wage jobs to regions experiencing substantial and persistent economic distress. EDA's investments generally take the form of grants or cooperative agreements with eligible recipients. To effectively administer and monitor its economic development assistance programs, EDA collects certain information from applicants for, and recipients of, EDA investment assistance.

Beginning November 7, 2003, all federal agencies are required to post their grant opportunity announcements at *www.grants.gov*. In FY 2007, the Office of Management and Budget required all federal agencies to post applicable financial assistance applications at *www.grants.gov*, enabling applicants to submit applications electronically through the Web site. For most of its economic development programs, EDA requires eligible applicants to submit a completed *Pre-Application for Investment Assistance* (Form ED–900P, OMB Control No. 0610–0094). Once the appropriate EDA regional office considers the ED–900P, it may invite the applicant to submit the full *Application for Investment Assistance* (Form ED–900A, OMB Control No. 0610–0094). This is the first year that EDA is able to receive pre-applications submitted electronically through *www.grants.gov*, which has alerted the agency to problems with its two-step application process. The *www.grants.gov* portal does not support the use of a pre-application followed by a subsequent application. The current process is burdensome and difficult, if not impossible, to implement on *www.grants.gov* because EDA's current pre-application package consists of Forms ED–900P and SF–424 (*Application for Financial Assistance*), and various attachments and exhibits which the applicant must include to complete the submission. If EDA later invites the applicant to submit a full application, the applicant must download the application (Form ED–900A) from EDA's Web site at *http://www.eda.gov*, and re-submit the Form SF–424. Hence, the current process is duplicative, inefficient and time-consuming for the applicant.

EDA's solution to this problem is to create a single-step application for investment assistance by combining into one application pertinent information requested from the applicant in the pre-application and application. The single-step application will remove the need for some of the additional attachments currently required in the pre-application and will allow the applicant to use electronically fillable forms that can be posted on *www.grants.gov*. This solution requires no new system development work on EDA's existing grants management system, so it does not conflict with the Grants Management Line of Business initiative, begun in Spring 2004.

This initiative seeks to develop a government-wide solution to support end-to-end grants management activities that promote citizen access, customer service, and agency financial and

technical stewardship. Rather, EDA's single-step application will make *www.grants.gov* a single access point for eligible applicants to electronically find and apply for its competitive grant opportunities.

This information collection is necessary to determine the applicant's eligibility for investment assistance under EDA's authorizing statute, the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*), and regulations (13 CFR Chapter III); the quality of the proposed scope of work to address the pressing economic distress of the region in which the proposed project will be located; the merits of the activities for which the investment assistance is requested; and the ability of the eligible applicant to carry out the proposed activities successfully.

II. Method of Collection

Paper or electronically.

III. Data

OMB Number: 0610–0094.
Form Number: EDA–900A.
Type of Review: Regular submission.
Affected Public: State and local governments; Indian tribes; institutions of higher education; non-profit institutions; business or other for-profit organizations; individuals or households.
Estimated Number of Respondents: 875.
Estimated Time Per Response: 40 hours (current burden for forms ED–900P and ED–900A is 46 hours).
Estimated Total Annual Burden Hours: 35,000.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 19, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–7832 Filed 4–24–07; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce. Applications may be examined between 8:30 a.m. and 5 p.m. in room 2104, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

Docket Number: 07–014. Applicant: U.S. Department of Commerce—National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899. *Instrument:* Electron Microscope, Model Quanta Series. *Manufacturer*: FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to image, measure and characterize moisture containing, wet, biological, semiconductor, energetic materials, nano-materials and composites, explosive materials and other non-conductive non-vacuum compatible materials. *Application accepted by Commissioner of Customs:* March 30, 2007.

Docket Number: 07–015. *Applicant:* VA Puget Sound Health Care System, 1660 S. Columbian Way, Seattle, WA 98108. *Instrument:* Electron Microscope, Model JEM–1011. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument is intended to be used to investigate cancer, atherosclerotic cardiovascular disease, diabetes, Alzheimer's disease and other pathologic processes commonly diagnosed in veterans. Electron microscopy specimens will include tissues and cells from humans or experimental animal models. *Application accepted by Commissioner of Customs:* March 28, 2007.

Docket Number: 07–018. *Applicant:* Virginia Polytechnic Institute and State University, Institute for Critical Technology and Applied Science, 1880 Pratt Drive, MC 0493, Blacksburg, VA 24061. *Instrument:* Electron Microscope, Model Quanta 600 FEG. *Manufacturer:* FEI Company, Brno, Czech Republic. *Intended Use:* The instrument is intended to be used to investigate biological samples, hydrated materials, and other specimens that have a high vapor pressure. As a part of a campus-wide, open user facility, it will be used in basic research studies of organic, inorganic, natural and synthetic materials (e.g. metals, ceramics, minerals, electronic materials, polymers, bio-materials). *Application accepted by Commissioner of Customs:* March 30, 2007.

Docket Number: 07–019. *Applicant:* University of Utah, Department of Ophthalmology & Visual Sciences, John A. Moran Eye Center, 65 Medical Drive, Salt Lake City, UT 84132. *Instrument:* Electron Microscope, Model JEM–1400. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument is intended to be used to generate a complete network map of the mammalian retina, against which changes triggered by disease or experimental intervention can be gauged. This work has taken on new importance as inherited or acquired retinal degenerations are now known to heavily impact retinal wiring and neuronal survival. *Application accepted by Commissioner of Customs:* April 2, 2007.

Docket Number: 07–020. *Applicant:* University of Rhode Island, Department of Chemical Engineering, 219 Morrill Science Building, Kingston, RI 02881. *Instrument:* Electron Microscope, Model JEM–2100. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument is intended to be used to study soft and hard nanoscale materials. The properties of the materials and phenomena to be investigated are size, shape and composition. *Application accepted by Commissioner of Customs:* April 9, 2007.

Docket Number: 07–021. *Applicant:* The University of Texas at Austin, Purchasing Office, 2200 Comal Street, Austin, TX 78722. *Instrument:* Electron Microscope, Model JEM–1400. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument is intended to be used for several different types of experiments which will be aimed at understanding the structural basis of learning and memory and/or neuropathological conditions. These

experiments include electrophysiology, molecular biology, pharmacology, and behavioral tests to learn how brain structure is altered as a function of associated changes with each of these manipulations. *Application accepted by Commissioner of Customs:* April 11, 2007.

Docket Number: 07–022. *Applicant:* Duke University, Box 90271, Durham, NC 27708–0271. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to discover and quantify the structure and dimension of materials and biological samples, and then gain an understanding of how this structure determines or influences the properties or behaviors of the material or biological entity. *Application accepted by Commissioner of Customs:* April 6, 2007.

Faye Robinson,

Director, Statutory Import Programs Staff.

[FR Doc. E7–7926 Filed 4–24–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce, Room 2104, 14th and Constitution Ave., NW., Washington, DC.

Docket Number: 06–054. *Applicant:* Purdue University, 465 Northwestern Ave., West Lafayette, IN 47907–2035. *Instrument:* DBF Fiber Laser System. *Manufacturer:* Koheras A/S, Denmark. *Intended Use:* The instrument is intended to be used to study and formulate the physical description of the fundamental noise properties of optical frequency combs and their application to Optical Arbitrary Waveform Generation. An ultra-narrow (1 kHz optical linewidth) CW laser is needed to sweep the carrier frequency and beat it with a conventional mode-locked laser based optical frequency comb. The CW laser also provides a 60 pm fast piezo tuning range and 700 pm thermal tuning with 100 mW output power. *Application accepted by Commissioner of Customs:* September 1, 2006.

Docket Number: 06–059. *Applicant:* Rutgers University, 3 Rutgers Plaza, Brunswick, NJ 08901–8559. *Instrument:* Micro-dissecting Microscope. *Manufacturer:* Singer Instruments, UK. *Intended Use:* The instrument is intended to be used to identify and categorize genes that control DNA replication and repair using a simple model organism known as baker's yeast. Strains of yeast-bearing mutations in genes that control the repair of damage in DNA and their genetic pathway will be studied. The instrument is a motorized micromanipulator specifically designed to separate single aspo-spores of yeast. It will also be used for student instruction in these areas. *Application accepted by Commissioner of Customs:* October 19, 2006.

Docket Number: 06–067. *Applicant:* The University of Illinois, 212 Tech Plaza, 616 East Green St., Champaign, IL 61820. *Instrument:* Ti: Sapphire Lasers (2), Model TIS–SF–077s. *Manufacturer:* Tekhnoscan, Russia. *Intended Use:* The lasers are intended to be used to study the application of ultra-cold atom gases to quantum simulation. They will be used to create an optical lattice, and part of a system for driving stimulated Raman transitions which will be integrated into a complex experimental apparatus requiring a CW, single-frequency, tunable Ti: sapphire ring laser with linewidth < 100 kHz, drift rate < 50 MHz/hour, locked to an external reference cavity, and completely reconfigurable for phase-locking optics and electronics with low drift rates since they will not be locked to a spectroscopic reference. *Application accepted by Commissioner of Customs:* November 20, 2006.

Docket Number: 07–005. *Applicant:* Millersville University, Physics Department, P.O. Box 1002, Millersville PA 17551. *Instrument:* HeNe Laser Cavity Educational Kit, Model CA–1200. *Manufacturer:* MICOS GmbH, Germany. *Intended Use:* The instrument is intended to be used in the lab portion of a course on optics for instruction on the physical principles and the components of a laser. Students will use the kit to build a He-Ne Laser themselves and study the role of different optical elements in the lasing effect. Lab studies will include intensity distribution, Gaussian beam, polarization, divergence, coherence monochromatism and other properties of light. *Application accepted by Commissioner of Customs:* January 17, 2007.

Docket Number: 07–007. *Applicant:* Illinois Institute of Technology, 10 W. 33rd St., Room 224, Chicago, IL 60616. *Instrument:* High Temperature Nano Test System. *Manufacturer:* Micro Materials, Ltd., UK. *Intended Use:* The instrument is intended to be used to assess the mechanical properties of Ni-base alloys at elevated temperatures. Nano indentation tests will be conducted on the specimens at a range of temperatures from room temperature to 750 C to assess the hardness and modulus of the Ni-base alloys. These tests will permit evaluation of the characteristic mechanical properties of the constituent phases present in experimental Ni-base alloys and contribute to the development of new high temperature materials. The instrument requires a unique, horizontally-designed pendulum indenter to allow testing of specimens at temperatures in excess of 750 C. *Application accepted by Commissioner of Customs:* January 23, 2007.

Docket Number: 07–0011. *Applicant:* State University of New York, Stony Brook University, Stony Brook, NY 11794. *Instrument:* Low-level Beta Multicounter System. *Manufacturer:* Riso National Laboratory, Denmark. *Intended Use:* The instrument is intended to be used to measure emissions from very small quantities of naturally occurring, dissolved radioactive isotopes of thorium and lead in seawater which are attached to particulate matter in very small quantities. Samples of the isotopes are taken at various depths and serve as tracers of the movement of carbon to the deep, an important process that affects the biological cycle of the ocean as well as the carbon content of the atmosphere and is important for understanding climate change. The instrument will also be used for graduate education. This is the only beta detector that meets the requirements of five simultaneous measurements with extremely low background count rates of 0.2 cpm. It is also capable of field use in harsh environments. *Application accepted by Commissioner of Customs:* February 23, 2007.

Docket Number: 07–012. *Applicant:* University of Wisconsin, 750 University Ave., Madison, WI 53706–1490. *Instrument:* Real-time 3D Motion Capture System. *Manufacturer:* Phoenix

Technologies, Inc., Canada. *Intended Use:* The instrument is intended to be used to measure limb movements of monkey subjects performing reach-to-grasp tasks. Electrical signals derived from individual brain cells will be correlated with parameters of movement in order to determine how information is encoded in the signals that the brain uses to communicate with the muscles. This research is relevant to neuro-prosthetics, spinal chord injury, stroke and motor rehabilitation. The dimensions of the testing chamber require that the infra red position markers can operate at a minimum distance of 0.6 m. *Application accepted by Commissioner of Customs:* March 5, 2007.

Faye Robinson,

Director, Statutory Import Programs Staff, Import Administration.

[FR Doc. E7–7928 Filed 4–24–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Notice Announcing the Americas Competitiveness Forum and Opportunities for Sponsorship and Media Partnership

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: U.S. Secretary of Commerce Carlos Gutierrez will host the inaugural Americas Competitiveness Forum on June 11–12, 2007, in Atlanta. This notice announces the Americas Competitiveness Forum and opportunities for sponsorship and media partnership.

DATES: The Americas Competitiveness Forum will be held on June 11–12, 2007. Applications for sponsorship and media partnership should be received no later than May 4, 2007.

ADDRESSES: For sponsorship opportunities please contact Alex Feldman, International Trade Administration at 202–482–2867 or *Alex.Feldman@mail.doc.gov.* For media partnership opportunities please contact Charles Skuba, Director of Public Affairs, International Trade Administration at 202–482–3809. Registration for the Forum can be found at *http://trade.gov/competitiveness/acf/registration.asp.*

FOR FURTHER INFORMATION CONTACT: The Americas Competitiveness Forum at *ACF@mail.doc.gov* or call the International Trade Administration at 1–800–USA–Trade or 202–482–0543. Additional information can be found at *http://trade.gov/competitiveness/acf/index.asp.*

SUPPLEMENTARY INFORMATION: U.S. Secretary of Commerce Carlos Gutierrez will host the inaugural Americas Competitiveness Forum on June 11–12, 2007, in Atlanta.

The Americas Competitiveness Forum (ACF) will provide a venue for government ministers from the Western Hemisphere to come together with leaders from the private sector, academia, and non-governmental organizations, to explore cutting edge ideas and best practices in several key areas of competitiveness.

The ACF's main tracks are:

- Sparking and sustaining innovation;
- Creating solutions in education and workforce development;
- Designing successful global supply chain strategies; and
- Fostering small business development and growth.

The ACF intends to serve as an on-going vehicle for governments, the private sector, academia, and non-governmental organizations to explore best practices and case studies on the issue of competitiveness in the Western Hemisphere. By highlighting practical examples, the ACF intends to provide information for decision makers to take steps to strengthen competitiveness in each country and in the region, in general.

Dated: April 12, 2007.

Alysia Wilson,

Director of Programs, Western Hemisphere.

[FR Doc. E7–7925 Filed 4–24–07; 8:45 am]

BILLING CODE 3510–DA–P

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Consumer Focus Groups

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: On January 18, 2007, the Consumer Product Safety Commission (CPSC or Commission) published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) (PRA), to announce the agency's intention to seek approval for a collection of information to be conducted through Consumer Focus Groups. 72 FR 2264. The Commission now announces that it is submitting to the Office of Management and Budget (OMB) a request for approval of that collection of information.

The Commission received two comments. Both commenters, Safe Kids Worldwide (Safe Kids) and Carol Pollack-Nelson, supported the collection of information because it would inform the Commission's plans in the areas of public education, recall effectiveness, product research and voluntary standards development. Safe Kids requested that a special emphasis be placed on children's products. Safe Kids also requested that the focus groups and any subsequent reports resulting from the focus groups be made available to the public. Staff is currently developing the format for specific focus groups and will evaluate whether making such focus groups and any resulting reports public may be useful after the program is fully operational.

The information collected from the Consumer Focus Groups will help inform the Commission's evaluation of consumer products and product use by providing insight and information into consumer perceptions and usage patterns. Such information may also assist the Commission in its efforts to support voluntary standards activities, and help the staff identify areas regarding consumer safety issues that need additional research. In addition, based on the information obtained, the staff may be able to provide safety information to the public that is easier to read and is more easily understood by a wider range of consumers. The Consumer Focus Groups also may be used to solicit consumer opinions and feedback regarding the effectiveness of product recall communications and in determining what action is being taken by consumers in response to such communications and why. This may aid in tailoring future recall activities to increase the success of those activities. If this information is not collected, the Commission may not have available certain useful information regarding consumer experiences, opinions, and perceptions related to specific product use, which the Commission uses, in part, in its ongoing efforts to improve the safety of consumer products on behalf of consumers.

Additional Information About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

Title of information collection: Consumer Focus Groups.

Type of request: Approval of collection of information.

General description of respondents: Persons who have purchased or used consumer products including recalled products.

Estimated annual number of respondents: 48.

Estimated average number of hours per respondent: 4 per year.

Estimated number of hours for all respondents: 192 per year.

Estimated cost per hour to respond: $26.86.

Estimated cost of collection for all respondents: $5,517.

Comments: Comments on this request for approval of information collection requirements should be captioned ''Consumer Focus Groups'' and submitted by May 25, 2007 to (1) the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for CPSC, Office of Management and Budget, Washington D.C. 20503; telephone: (202) 395–7340, and (2) to the Office of the Secretary by e-mail at *cpsc-os@cpsc.gov*, or mailed to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814. Comments may also be sent via facsimile at (301) 504–0127.

Copies of this request for approval of information collection requirements and supporting documentation are available from Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7671.

Dated: April 19, 2007.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E7–7811 Filed 4–24–07; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 07–16]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/CFM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 07–16 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: April 19, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

APR 18 2007

In reply refer to:
I-07/002941

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-16, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Norway for defense articles and services estimated to cost $520 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies

chard J. [illegible]
[illegible]uty Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 07-16

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Norway

(ii) Total Estimated Value:

Major Defense Equipment*	$331 million
Other	$189 million
TOTAL	$520 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:

4 Lockheed Martin C-130J-30 United States Air Force (USAF) baseline aircraft and equipment
16 Rolls Royce AE 2100D3 engines
2 Rolls Royce AE 2100D3spare engines
4 AAR-47 Missile Warning Systems
1 spare AAR-47 Missile Warning System
4 AN/ALR-56M Advanced Radar Warning Receivers
1 spare AN/ALR-56M Advanced Radar Warning Receiver
4 AN/ALE-47 Counter-Measures Dispensing Systems
1 spare AN/ALE-47 Counter-Measures Dispensing System
2 spare AN/ARC-210 Single Channel Ground and Airborne Radio Systems (SINCGARS)
2 spares AN/AAR-222 SINCGARS and Key Gen (KV-10) Systems
10 Advanced Adaptive Anti-jam Antenna Systems

Also included spare and repair parts, configurations updates, non-Major Defense Equipment Communications Security equipment and radios, integration studies, support equipment, publications and technical documentation, technical services, personnel training and training equipment, foreign liaison office support, Field Service Representatives, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support.

* as defined in Section 47(6) of the Arms Export Control Act.

(iv) **Military Department: Air Force (SAF)**

(v) **Prior Related Cases, if any: none**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none**

(viii) **Date Report Delivered to Congress:** APR 18 2007

POLICY JUSTIFICATION

Norway - C-130J Aircraft

The Government of Norway has requested a possible sale of

- **4 Lockheed Martin C-130J-30 United States Air Force (USAF) baseline aircraft and equipment**
- **16 Rolls Royce AE 2100D3 engines**
- **2 Rolls Royce AE 2100D3spare engines**
- **4 AAR-47 Missile Warning Systems**
- **1 spare AAR-47 Missile Warning System**
- **4 AN/ALR-56M Advanced Radar Warning Receivers**
- **1 spare AN/ALR-56M Advanced Radar Warning Receiver**
- **4 AN/ALE-47 Counter-Measures Dispensing Systems**
- **1 spare AN/ALE-47 Counter-Measures Dispensing System**
- **2 spare AN/ARC-210 Single Channel Ground and Airborne Radio Systems (SINCGARS)**
- **2 spares AN/AAR-222 SINCGARS and Key Gen (KV-10) Systems**
- **10 Advanced Adaptive Anti-jam Antenna Systems**

Also included spare and repair parts, configuration updates, non-Major Defense Equipment Communications Security equipment and radios, integration studies, support equipment, publications and technical documentation, technical services, personnel training and training equipment, foreign liaison office support, Field Service Representatives, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support. The estimated cost is $520 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Norway to fulfill its North Atlantic Treaty Organization (NATO) obligations; furthering NATO rationalization, standardization, and interoperability; and enhancing the defense of the Western Alliance.

Norway has provided support to the Balkans, the Baltics, and the NATO mission in Afghanistan and Iraq. Norwegian efforts in peacekeeping and humanitarian operations have made a significant contribution to regional political and economic stability and have served US national security interests. The sale of C-130Js to Norway will significantly increase its capability to provide intra-theater lift for its forces.

Norway intends to use the C-130J aircraft for intra-theater support for its troops involved in worldwide operations. Additionally, the aircraft will be used for humanitarian relief operations in various locations to include the Sudan, the Middle East, and Afghanistan. Purchase of new transport aircraft will provide Norway with the ability to operate seamlessly with U.S., NATO and coalition forces engaged in all types of operations and missions.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: Lockheed Martin Aeronautics Company in Fort Worth, Texas and Rolls-Royce Corporation in Indianapolis, Indiana. Offset agreements associated with this proposed sale are expected, but at this time the specific offset agreements are undetermined and will be defined in negotiations between the purchaser and contractors.

The number of U.S. Government and contractor representatives required in-country to support the program will be determined in joint negotiations as the program proceeds through the development, production, and equipment installation phases.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 07-16

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The C-130 Hercules aircraft primarily performs the tactical portion of the airlift mission. The aircraft is capable of operating from rough, dirt strips and is the prime transport for air dropping troops and equipment into hostile areas. The C-130 operates throughout the U.S. Air Force, serving with Air Mobility Command, Air Force Special Operations Command, Air Combat Command, U.S. Air Forces in Europe, Pacific Air Forces, Air National Guard and the Air Force Reserve Command, fulfilling a wide range of operational missions in both peace and war. The C-130J improvements over the C-130E include improved maximum speed, climb time, cruising altitude and range. The C-130J has 55 feet of cargo compartment length - an additional 15 feet over the original "short" aircraft.

2. The AN/ALE-47 Counter-Measures Dispensing System (CMDS) is an integrated, threat-adaptive, software-programmable dispensing system capable of dispensing chaff, flares, and active radio frequency expendables. The threats countered by the CMDS include radar-directed anti-aircraft artillery (AAA), radar command-guided missiles, radar homing guided missiles, and infrared (IR) guided missiles. The system is internally mounted and may be operated as a stand-alone system or may be integrated with other on-board early warning and avionics systems. The AN/ALE-47 uses threat data received over the aircraft interfaces to assess the threat situation and to determine a response. Expendable routines tailored to the immediate aircraft and threat environment may be dispensed using one of four operational modes. Hardware is Unclassified. Technical data and documentation to be provided is Unclassified.

3. The AN/AAR-47 Missile Warning System is a small, lightweight, passive, electro-optic, threat warning device used to detect surface-to-air missiles fired at helicopters and low-flying fixed-wing aircraft and automatically provide countermeasures, as well as audio and visual-sector warning messages to the aircrew. The basic system consists of multiple Optical Sensor Converter (OSC) units, a Computer Processor (CP) and a Control Indicator (CI). The set of OSC units, normally four, is mounted on the aircraft exterior to provide omni-directional

protection. The OSC detects the rocket plume of missiles and sends appropriate signals to the CP for processing. The CP analyzes the data from each OSC and automatically deploys the appropriate countermeasures . The CP also contains comprehensive built-in test circuitry. The control indicator displays the incoming direction of the threat, so that the pilot can take appropriate action. Hardware is Unclassified. Technical data and documentation to be provided is Unclassified.

4. The AN/ALR-56M Advanced Radar Warning Receiver continuously detects and intercepts Radio Frequency signals in certain frequency ranges and analyzes and separates threat signals from non-threat signals. It contributes to full-dimensional protection by providing individual aircraft probability of survival through improved aircrew situational awareness of the radar-guided threat environment. The ALR-56M is designed to provide improved performance in a dense signal environment and improved detection of modern threats signals. Hardware is Unclassified. Technical data and documentation to be provided is Unclassified.

5. The AN/ALQ-157 Infrared Counter Measures System provides multiple simultaneous protection for large heavy-lift helicopters and medium-size fixed-wing aircraft against Surface-to-air Missiles and Air-to-air Missiles threats. The system employs advanced components and microprocessor technology to allow operator jamming code selection and reprogram capability for future threats. The two fuselage-mounted synchronized jammer assemblies provide continuous protection against threats launched from any direction. The power module, line filter and pilot control indicator can be placed anywhere within the aircraft. Hardware is Unclassified. Technical data and documentation to be provided is Unclassified.

6. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures that might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 07–2044 Filed 4–24–07; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Subcommittee Site Visit of the President's Commission on Care for America's Returning Wounded Warriors

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–462, as amended, notice is hereby given of a forthcoming subcommittee site visit of the President's Commission on America's Returning Wounded Warriors. The purpose of the subcommittee site visit is to gather information.

DATES: Tuesday, 8 May 2007.

Location: Richmond, Virginia, McGuire Veterans Affairs Medical Center, 1201 Broad Rock Blvd, Phone 804–675–5000.

FOR FURTHER INFORMATION CONTACT: Col. Denise Daily, 703–588–0439.

SUPPLEMENTARY INFORMATION: None.

Note: Exact order and topics may vary.

Dated: April 19, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 07–2041 Filed 4–24–07; 8:45am]
BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Missile Defense Advisory Committee (MDAC)

AGENCY: Department of Defense; Missile Defense Agency (MDA)/

ACTION: Notice of closed meeting.

SUMMARY: The Missile Defense Advisory Committee will meet in closed session on May 3–4, 2007, in Washington, DC.

The mission of the Missile Defense Advisory Committee is to provide the Department of Defense advice on all matters relating to missile defense, including system development, technology, program maturity and readiness of configurations of the Ballistic Missile Defense System (BMDS) to enter the acquisition process. At this meeting, the Committee will receive classified briefings by

intelligence officials concerning estimated future developments.

FOR FURTHER INFORMATION CONTACT: COL David R. Wolf, Designated Federal Official (DFO) at *david.wolf@mda.mil,* phone/voice mail (703) 695–6438, or mail at 7100 Defense Pentagon, Washington, DC 20301–7100.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that this Missile Defense Advisory Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: April 18, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 07–2042 Filed 4–24–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Missile Defense Advisory Committee (MDAC)

AGENCY: Department of Defense; Missile Defense Agency (MDA).

ACTION: Notice of closed meeting.

SUMMARY: The Missile Defense Advisory Committee will meet in closed session on June 12–13, 2007, in Washington, DC.

The mission of the Missile Defense Advisory Committee is to provide the Department of Defense advice on all matters relating to missile defense, including system development, technology, program maturity and readiness of configurations of the Ballistic Missile Defense System (BMDS) to enter the acquisition process. At this meeting, the Committee will receive classified briefings by intelligence officials concerning estimated future developments, as well as develop recommendations to be briefed to the Director, Missile Defense Agency.

FOR FURTHER INFORMATION CONTACT: COL David R. Wolf, Designated Federal Official (DFO) at *david.wolf@mda.mil,* phone/voice mail (703) 695–6438, or mail at 7100 Defense Pentagon, Washington, DC 20301–7100.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that this Missile Defense Advisory Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: April 18, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 07–2043 Filed 4–24–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency National Defense Intelligence College.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA National Defense Intelligence College Board of Visitors has been scheduled as follows:

DATES: Tuesday, 5 June 2007, 0800 to 1700; and Wednesday, 6 June 2007, 0800 to 1200.

ADDRESSES: National Defense Intelligence College, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Mr. A. Denis Clift, President, DIA National Defense Intelligence College, Washington, DC 20340–5100 (202/231–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the National Defense Intelligence College.

Dated: April 19, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 07–2021 Filed 4–24–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Commission on Care for America's Returning Wounded Warriors

AGENCY: Department of Defense.

ACTION: Federal Advisory Committee meeting notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended) and 41 Code of Federal Regulations (CFR) 102–3.140 thorough 160, the Department of Defense announces the forthcoming public meeting:

Name of Committee: President's Commission on Care for America's Returning Wounded Warriors (hereafter referred to as the Commission).

Date of Meeting: May 4, 2007.

Time of Meeting: 10 a.m. to (To Be Determined).

Place of Meeting: Hilton San Antonio Airport; 611 NW., Loop 410, San Antonio, Texas 78216; (210) 340–6060.

Purpose of Meeting: To obtain, review and evaluate information related to the Commission's mission to examine the care provided to wounded service members. The Commission will receive briefings on topics relating to the care and rehabilitation of wounded service members.

Agenda:

9 a.m. to 9:45 a.m. Administrative Work Meeting (Not Open to the Public)

10 a.m.—To Be Determined (Public Session)

Presentations:

A. Rehabilitation (Ortho, Burns, TBI)
B. Traumatic Brain Injury
C. Med Hold/Holdover Barracks
D. System Issues
E. Public Comment
F. Wrap Up

Prior to its public meeting, various subcommittees of the Commission will conduct preparatory work meetings in the San Antonio area to gather information, conduct research and analyze relevant issues and facts in preparation for a meeting of the Commission. Pursuant to section 102–3.160(a) of 41 Code of Federal Regulations (CFR), these subcommittee meetings are not open to the public, and the subcommittees are required to report their findings to the Commission for further deliberation.

The Commission's May 4, 2007 meeting at the Hilton San Antonio Airport, subject to the availability of seating, is open to the public.

Interested persons or organizations may submit written statements for consideration by the Commission at any time or in response to the stated agenda of a planned meeting. Persons desiring to make an oral presentation or submit a written statement to the Commission for the May 3–4, 2007 meeting must

notify the point of contact listed below no later than April 27, 2007.

Oral presentations by members of the public will be permitted only on 4 May at 1 to 1:30 before the full Commission. Presentations will be limited to 5 minutes. The Executive Director and the Designated Federal Official will select individuals for oral presentations and notify them in advance of the opportunity to make a 5 minute presentation to the Commission.

The Number of oral presentations to be made will depend on the number of requests received from members of the public. Each person desiring to make an oral presentation must provide the point of contact listed below with one (1) copy of the presentation by April 27, 2007, 5 p.m. and one copy of any material that is intended for distribution at the meeting.

Persons submitting a written statement must submit one copy of the statement to the Commission staff by April 27, 2007, 5 p.m.

Point of Contact is Denise Dailey or Adrianne Holloway, toll free (877) 588–2035 or Fax statements (703) 588–2046.

The Commission's April 17, 2007 decision to schedule a meeting for May 3–4, 2007 and the delay in finalizing the meeting agenda made it impossible for the Commission to publish a **Federal Register** meeting notice for the 15 calendar days required by 41 CFR 102–3.150(a). Accordingly, the Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15 calendar day notification requirement for this meeting.

For Further Information on Submitting Statements Contact: Col. Denise Dailey or Adrianne Holloway, toll free (877) 588–2035 or Fax statements (703) 588–2046.

Dated: April 20, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 07–2060 Filed 4–23–07; 11:20 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Academy Board Of Visitors Meeting

AGENCY: Department of the Air Force, U.S. Air Force Academy Board of Visitors.

ACTION: Notice of meeting.

SUMMARY: Pursuant to 10 U.S.C. 9355, the U.S. Air Force Academy (USAFA) Board of Visitors (BoV) will meet at USAFA, Colorado Springs, Colorado, on 4–5 May 2007. The purpose of this meeting is to review morale and discipline, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

Pursuant to 5 U.S.C. 552b, as amended and 41 CFR 102–3.155, the Department of Defense has determined that portions of this meeting shall be closed to the public. The Administrative Assistant to the Secretary of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that the public interest requires that portions of this meeting be closed to the public because it will be concerned with matters listed in § 552b(c)(6) and (9) of Title 5 United States Code.

Public attendance at the open portions of this USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act (FACA) and the procedures described in this paragraph. Written statements should be no longer than two type-written pages and must address the following details: the issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal Officer (DFO) at the address detailed below at any time. However, if a written statement is not received at least 10 days before the first day of the meeting which is the subject of this notice, then it may not be provided to, or considered by, the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairperson and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during open portions of this BoV meeting shall be made available upon request.

If, after review of timely submitted written comments, the BoV Chairperson and DFO deem appropriate, they may choose to invite the submitter of the written comments to orally present their issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairperson to allow specific persons to make oral presentations before the BoV. Any oral presentations before the BoV shall be in accordance with 41 CFR 102–3.140(c), section 10(a)(3) of the FACA, and this paragraph. The DFO and BoV Chairperson may, if desired, allot a specific amount of time for members of the public to present their issue for BoV review and discussion. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairperson.

DATES: Meeting sessions will begin at 9 a.m. on 4 May 2007 in Harmon Hall, 2304 Cadet Drive, Suite 3300, USAFA, Colorado Springs, Colorado.

FOR FURTHER INFORMATION: Or to attend this BoV meeting, contact Mr. Scotty Ashley, USAFA Programs Manager, Directorate of Airman Development and Sustainment, Deputy Chief of Staff, Manpower and Personnel, AF/A1DOA, 1040 Air Force Pentagon, Washington, DC, 20330–1040, (703) 695–3594.

Bao-Anh Trinh,

DAF, Air Force Federal Register Liaison Officer.

[FR Doc. E7–7886 Filed 4–24–07; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Coal Council

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Coal Council Coal Policy Committee. The purpose of the meeting is to discuss the draft report requested by Secretary Bodman on June 26, 2006. The purpose of this report is to examine technologies available to avoid, or capture and store carbon dioxide emissions, especially those from coal-based electric utilities. Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, May 2, 2007, 1 p.m. to 3 p.m.

ADDRESSES: Hilton St. Louis, Market Street Room (Main Floor), One South Broadway, St. Louis, MO 63102.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Kane, Phone: (202) 586–4753, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues:

Public Participation: The meeting is open to the public. The Chair of the NCC will conduct the meeting to facility orderly business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Mr. Robert Kane at the address and telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule. This notice is being published less than 15 days before the date of the meeting because the meeting location has just been finalized.

Minutes: The minutes will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on April 20, 2007.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–7856 Filed 4–24–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under the Biomass Research and Development Act of 2000. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee.

DATES AND TIMES: May 15, 2007 from 1 p.m. to 5:15 p.m. May 16, 2007 from 8:30 a.m. to 4:15 p.m.

ADDRESSES: Quorum Room, L'Enfant Plaza Hotel, 480 L'Enfant Plaza SW., Washington, DC 20024, *http://www.lenfantplazahotel.com.*

FOR FURTHER INFORMATION CONTACT: Valri Lightner, Designated Federal Officer for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–0937 or Michael Manella at (410) 997–7778 x217; E-mail: *mmanella@bcs-hq.com.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance that promotes research and development leading to the production of biobased fuels and biobased products.

Tentative Agenda: Agenda will include the following:

- Welcome/Update from the Biomass R&D Board
- Introduction of new Department of Energy Designated Federal Officer
- Update on U.S. Department of Agriculture (USDA) Activities
- Presentation on USDA Matrix Benefit Analysis of 2002 Farm Bill Section 9008 Projects
- Updates from the Policy, Communications, and Analysis Subcommittees
- Presentation on Genomics Bioenergy Research Centers
- Presentation on International Biofuels Codes and Standards
- Discussion of the Roadmap Update
- Discussion of Fiscal Year 2007 Recommendations to the Secretaries of Agriculture and Energy
- Discussion of 2007 Committee Work Plan

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you should contact Valri Lightner at 202–586–0937 or the Biomass Initiative 410–997–7778 x217 or *mmanella@bcs-hq.com* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on April 20, 2007.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–7854 Filed 4–24–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX06–2–006]

Aero Energy, LLC; Notice of Filing

April 18, 2007.

Take notice that on April 16, 2007, Sagebrush Partnership filed executed copies of its Interconnection Agreement and the Transmission Service Agreement between itself and Aero Energy, LLC, pursuant to ordering paragraph B of the Commission's March 15, 2007 order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 16, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7797 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–158]

ANR Pipeline Company; Notice of Negotiated Rate Amendment Filing

April 19, 2007.

Take notice that on April 2, 2007, ANR Pipeline Company (ANR) tendered for filing and approval a negotiated rate agreement amendments between ANR and Wisconsin Gas, L.L.C., ANR and Wisconsin Electric Power Company, and ANR and Wisconsin Public Service Corporation.

ANR requests that the Commission accept and approve the subject filing to be effective April 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7857 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–115–000]

CenterPoint Energy-Illinois Gas Transmission Company; Notice of Application for Blanket Certificate and Petition for Rate Review

April 19, 2007.

Take notice that on March 23, 2007, pursuant to section 7(c) of the Natural Gas Act, 15 U.S.C. 717(f)(c), and section 284.224 of the Commission's regulations, 18 CFR 284.224, CenterPoint Energy-Illinois Gas Transmission Company (IGTC), an Illinois Hinshaw pipeline company that is not subject to the jurisdiction of FERC, applied for a blanket certificate of public convenience and necessity authorizing IGTC to engage in non-discriminatory transportation of natural gas in interstate commerce and for approval of proposed rates and charges applicable to the provision of natural gas transportation service under its proposed blanket certificate.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time April 30, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7859 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–173]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

April 19, 2007.

Take notice that on April 13, 2007, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval two negotiated rate agreements between CEGT and XTO Energy, Inc.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by

the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7867 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–583–001; EL07–41–000]

Commonwealth Edison Company, Commonwealth Edison Company of Indiana; Notice of Filing

April 19, 2007.

Take notice that on April 12, 2007, Commonwealth Edison Company, on behalf of Commonwealth Edison Company of Indiana, Inc. filed a response to the Commission's March 30, 2007 deficiency letter.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 27, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7860 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–49–003]

Entergy Services, Inc.; Notice of Filing

April 18, 2007.

Take notice that on April 16, 2007, Entergy Services Inc., acting as agent for Entergy Louisiana, LLC filed a refund report, pursuant to the Commission's February 28, 2007 Order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 7, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7799 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–361–001]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

April 19, 2007.

Take notice that on April 16, 2007, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheet attached to Appendix B to the filing, with an effective date of November 1, 2008.

Maritimes states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR

385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7862 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–60–002]

PJM Interconnection, L.L.C.; Notice of Filing

April 18, 2007.

Take notice that on April 10, 2007, PJM Interconnection, LLC filed an amendment to its October 17, 2005 compliance filing, pursuant to the Commission's September 15, 2006 order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 1, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7800 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–400–000]

Rockies Express Pipeline LLC; Notice of Filing of Penalty Reconciliation Report

April 19, 2007.

Take notice that on April 16, 2007, Rockies Express Pipeline LLC (Rockies Express) tendered for filing its Penalty Reconciliation report for the period January 1, 2006, through December 31, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time April 26, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7865 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–401–000]

Rockies Express Pipeline LLC; Notice of Annual Fuel Gas Percentage Report

April 19, 2007.

Take notice that on April 16, 2007, Rockies Express Pipeline LLC (Rockies Express) tendered for filing its Annual Fuel Gas Percentage report pursuant to section 26.3 of the general terms and conditions of its FERC Gas Tariff, First Revised Volume No. 1. Rockies Express also included 2nd Revised Sheet Nos. 20, 20A and 20B in this filing.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time April 26, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7866 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–645–000]

Sleeping Bear, LLC; Notice of Issuance of Order

April 18, 2007.

Sleeeping Bear, LLC (Sleeping Bear) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Sleeping Bear also requested waivers of various Commission regulations. In particular, Sleeping Bear requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Sleeping Bear.

On April 17, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Sleeping Bear should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is May 17, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Sleeping Bear is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Sleeping Bear, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Sleeping Bear's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7802 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–451–001]

Texas-Ohio Pipeline, Inc.; Notice of Cancellation of Tariff

April 19, 2007.

Take notice that on April 2, 2007, Texas-Ohio Pipeline, Inc., (Texas-Ohio) tendered for filing its Notice of Cancellation of FERC Gas Tariff, pursuant to the Commission's October 17, 2000 Order in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 3, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7858 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–034]

Transcontinental Gas Pipe Line Corporation; Notice of Negotiated Rate

April 19, 2007.

Take notice that on April 13, 2007, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a copy of an executed service agreement between Transco and Southern Company Services, Inc. as agent for Southern Power Company which includes a negotiated rate for firm transportation service under Transco's Momentum Expansion Project. The effective date of the agreement is January 1, 2011.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7868 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–159–000]

Williston Basin Interstate Pipeline Company; Notice of Application

April 18, 2007.

Take notice that on April 16, 2007, Williston Basin Interstate Pipeline Company (Williston Basin), 1250 West Century Avenue, Bismarck, North Dakota 58503, filed an application in Docket No. CP07–159–000 pursuant to section 7(c) of the Natural Gas Act (NGA) for authorization to reclassify approximately 6 miles of Williston Basin's 12-inch No. 3 natural gas storage line from the storage function to the gathering function, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or Telephone: 202–502–6652; Toll-free: 1–866–208–3676; or for TTY, contact (202) 502–8659.

Any initial questions regarding this application should be directed to Keith A. Tiggelaar, Director of Regulatory Affairs for Williston Basin, P.O. Box 5601, Bismarck, North Dakota 58506–5601 at (701) 530–1560.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceeding for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons

filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 9, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7798 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–131–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

April 18, 2007.

Take notice that on April 9, 2007, Williston Basin Interstate Pipeline Company (Williston Basin), 1250 West Century Avenue, Bismarck, North Dakota 58503, filed in Docket No. CP07–131–000, a prior notice request pursuant to sections 157.205 and 157.210 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to construct and operate mainline natural gas facilities consisting of compression, piping, and measurement, located in Fallon County, Montana, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Specifically, Williston Basin proposes to construct a new compressor station, the Sandstone Creek Compressor Station, comprised of two 1,680 horsepower units, totaling 3,360 horsepower, and appurtenant facilities, including gas and jacket water coolers, measurement, communication and electrical equipment, and station piping. Williston Basin also proposes modification work at the existing Cabin Creek Compressor Station Unit No. 15, which will include a new compressor impeller, modification to the aboveground discharge header station, and a new gas cooler for Unit No. 15 discharge. In addition, Williston Basin proposes to construct approximately 4,800 feet of 6-inch diameter steel pipeline called the Big Gumbo Lateral. Williston Basin estimates the cost of construction to be $6,000,000. Williston Basin states that it has entered into Precedent Agreements which provide that Williston Basin will deliver a Maximum Daily Delivery Quantity of 41,000 equivalent dekatherms per day of firm transportation service during the project's first in-service year November 1, 2007 through October 31, 2008.

Any questions regarding the application should be directed to Keith A. Tiggelaar, Director of Regulatory Affairs, Williston Basin Interstate Pipeline Company, P.O. Box 5601, Bismarck, North Dakota 58506–5601, or call at (701) 530–1560.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7806 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–56–000]

Allegheny Electric Cooperative, Inc., Borough of Chambersburg, Pennsylvania; City and Towns of Hagerstown, Thurmont, and Williamsport, Maryland; District of Columbia Office of the People's Counsel; Illinois Citizens Utility Board; Indiana Office of Utility Consumer Counsel; Maryland Office of People's Counsel; New Jersey Division of Rate Counsel; Office of the Attorney General of Virginia, Division of Consumer Counsel; Office of the Ohio Consumer's Counsel; Old Dominion Electric Cooperative; Pennsylvania Office of Consumer Advocate; PJM Industrial Customer Coalition; Southern Maryland Electric Cooperative, Inc.; State of Delaware, Division of the Public Advocate v. PJM Interconnection, L.L.C.; Notice of Complaint

April 18, 2007.

Take notice that on April 17, 2007, the above-referenced ''Joint Complainants'' tendered for filing, pursuant to sections 205 and 206 of the Federal Power Act, 16 U.S.C. 824d and 824e (2006) and Rule 206 of Commission's Rules of Practice and Procedure, 18 CFR 385.206, a complaint for a Show Cause Order and assurances from PJM Interconnection, L.L.C. that it has not violated, and will not violate, its tariff requirements pertaining to market monitoring.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 30, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7801 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP06–231–003 and RP06–365–001]

Norstar Operating, LLC v. Columbia Gas Transmission Corporation; Notice of Compliance Filing

April 19, 2007.

Take notice that on April 16, 2007, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of June 1, 2007:

Fifth Revised Sheet No. 406
Fourth Revised Sheet No. 407
First Revised Sheet No. 408
Original Sheet No. 409

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7861 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Compliance Filings

April 18, 2007.

	Docket Nos.
Sierra Pacific Resources Operating Companies	OA07–2–000
Tampa Electric Company	OA07–3–000
UNS Electric, Inc	OA07–4–000
Avista Corporation	OA07–5–000
Cleco Power LLC	OA07–6–000
NorthWestern Corporation (South Dakota)	OA07–7–000
Mid-Continent Area Power Pool	OA07–8–000
Puget Sound Energy, Inc	OA07–9–000
E.ON U.S. LLC	OA07–10–000
Deseret Generation & Transmission Co-operative, Inc	OA07–11–000
MidAmerican Energy Company	OA07–12–000
NorthWestern Corporation (Montana)	OA07–13–000
Maine Public Service Company	OA07–14–000
Portland General Electric Company	OA07–15–000
Black Hills Power, Inc	OA07–16–000
Entergy Services, Inc	OA07–17–000
PacifiCorp	OA07–18–000
Arizona Public Service Company	OA07–19–000

Take notice that on April 13 and April 16, 2007, the above-referenced companies submitted filings, pursuant to section 205 of the Federal Power Act and Order No. 890, 118 FERC ¶ 61,119 (2007), requesting that the Commission find that previously-approved deviations from the Commission's pro forma open access transmission tariff (OATT) remain consistent with or superior to the terms and conditions of the OATT as reformed by Order No. 890.

Any person desiring to intervene or to protest these filings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the

comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 7, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7803 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

April 18, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–79–000; ER01–2398–015.

Applicants: Liberty Electric Power, LLC.

Description: Liberty Electric Power, LLC submits an application for authorization for disposition of jurisdictional facilities, notice of change in status and request for expedited action.

Filed Date: 04/13/2007.

Accession Number: 20070418–0039

Comment Date: 5 p.m. Eastern Time on Friday, May 04, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–3822–010; ER06–1106–002; ER06–1107–002.

Applicants: Casco Bay Energy Company, LLC; LSP Arlington Valley, LLC; LSOp Mohave, LLC.

Description: Casco Bay Energy Company, LLC et al. submit an updated triennial market power analysis.

Filed Date: 04/12/2007.

Accession Number: 20070416–0330

Comment Date: 5 p.m. Eastern Time on Thursday, May 03, 2007.

Docket Numbers: ER03–1283–009

Applicants: Vineland Energy, LLC.

Description: Vineland Energy, LLC submits its triennial updated market analysis.

Filed Date: 04/11/2007.

Accession Number: 20070413–0156

Comment Date: 5 p.m. Eastern Time on Wednesday, May 02, 2007.

Docket Numbers: ER07–501–001; ER06–739–005; ER06–738–005; ER03–983–004.

Applicants: Birchwood Power Partners, L.P.; Cogen Technologies Linden Venture, L.P.; East Coast Power Linden Holding, L.L.C.; Fox Energy Company, LLC.

Description: Cogen Technologies Linden Venture, LP et al. submit a change in status relating to an indirect acquisition of several local gas distribution companies.

Filed Date: 04/12/2007.

Accession Number: 20070416–0331

Comment Date: 5 p.m. Eastern Time on Thursday, May 03, 2007.

Docket Numbers: ER07–608–002

Applicants: Gerdau Ameristeel Energy, Inc.

Description: Gerdau Ameristeel Energy, Inc submit an amendment to its filing.

Filed Date: 04/03/2007.

Accession Number: 20070403–5021

Comment Date: 5 p.m. Eastern Time on Tuesday, April 24, 2007.

Docket Numbers: ER07–632–002

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC on behalf of Neptune Regional Transmission, LLC submits amendments to Schedule 14 of PJM's Open Accession Transmission Tariff filed on 3/16/07.

Filed Date: 04/13/2007.

Accession Number: 20070418–0008

Comment Date: 5 p.m. Eastern Time on Thursday, April 26, 2007.

Docket Numbers: ER07–698–001

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co submits an errata to its special facilities and interconnection agreement executed with Trans Bay Cable LLC.

Filed Date: 04/11/2007.

Accession Number: 20070413–0153

Comment Date: 5 p.m. Eastern Time on Wednesday, May 02, 2007.

Docket Numbers: ER07–736–000

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed service agreement for Firm Point-to-Point Transmission Service with the City of Independence, Missouri.

Filed Date: 04/11/2007.

Accession Number: 20070413–0154

Comment Date: 5 p.m. Eastern Time on Wednesday, May 02, 2007.

Docket Numbers: ER07–737–000

Applicants: PacifiCorp.

Description: PacifiCorp submits the Facilities Agreement and Interconnection Agreement with Kaysville City Corporation.

Filed Date: 04/11/2007.

Accession Number: 20070413–0155

Comment Date: 5 p.m. Eastern Time on Wednesday, May 02, 2007.

Docket Numbers: ER07–743–000

Applicants: Entergy Services Inc.

Description: Entergy Operating Companies submits copies of the 3/5/07 First Revised Long-Term Firm Point-to-Point Transmission Service Agreement with Plum Point Energy Associates, LLC.

Filed Date: 04/12/2007.

Accession Number: 20070413–0149

Comment Date: 5 p.m. Eastern Time on Thursday, May 03, 2007.

Docket Numbers: ER07–744–000

Applicants: Northern Maine Independent System Administrator, Inc.

Description: Northern Maine Independence System Administrator, Inc submits revisions to FERC Electric Tariff, Original Volume 1.

Filed Date: 04/13/2007.

Accession Number: 20070416–0338

Comment Date: 5 p.m. Eastern Time on Friday, May 04, 2007.

Docket Numbers: ER07–745–000

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy, Inc submits its compliance filing to incorporate by reference standards promulgated by the Wholesale Electric Quadrant of the North American Energy Standards Board etc, Order 676–A.

Filed Date: 04/13/2007.

Accession Number: 20070416–0334

Comment Date: 5 p.m. Eastern Time on Friday, May 04, 2007.

Docket Numbers: ER07–746–000

Applicants: Tenaska Alabama II Partners, L.P.

Description: Tenaska Alabama II Partners, LP submits a Rate Schedule FERC 1 under which it specifies its revenue requirement for providing Reactive Supply and Voltage Control from Generation Sources Service etc.

Filed Date: 04/13/2007.

Accession Number: 20070416–0335

Comment Date: 5 p.m. Eastern Time on Friday, May 04, 2007.

Docket Numbers: ER07–747–000
Applicants: Central Hudson Gas & Electric Corporation.
Description: Central Hudson Gas & Electric Corp submits First Revised Substitute Service Agreement 261 for Danskammer Generating Station.
Filed Date: 04/13/2007.
Accession Number: 20070418–0003
Comment Date: 5 p.m. Eastern Time on Friday, May 04, 2007.

Docket Numbers: ER07–748–000
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc submits revisions to its Market Administration and Control Area Services Tariff and its Open Access Transmission Tariff, with an effective date of 5/13/07.
Filed Date: 04/13/2007.
Accession Number: 20070417–0101
Comment Date: 5 p.m. Eastern Time on Friday, May 04, 2007.

Docket Numbers: ER07–749–000
Applicants: Dyon, LLC.
Description: Dyon, LLC submits a Petition for acceptance of Initial Rate Schedule FERC 1, waivers and blanket authority by Dyon, LLC.
Filed Date: 04/13/2007.
Accession Number: 20070418–0004
Comment Date: 5 p.m. Eastern Time on Friday, May 04, 2007.

Docket Numbers: ER07–750–000
Applicants: American Electric Power System Corporation.
Description: American Electric Power Service Corp, as agent for AEP Texas North Co, submits executed amendments to the Interconnection Agreement with West Texas Utilities Co & Brazos Electric Power Coop, Inc.
Filed Date: 04/13/2007.
Accession Number: 20070418–0005
Comment Date: 5 p.m. Eastern Time on Friday, May 04, 2007.

Docket Numbers: ER07–751–000
Applicants: Lea Power Partners, LLC.
Description: Lea Power Partners, LLC submits an application for order accepting market-based rate tariff, granting authorization and blanket authority & waiving certain requirements.
Filed Date: 04/13/2007.
Accession Number: 20070418–0006
Comment Date: 5 p.m. Eastern Time on Friday, May 04, 2007.

Docket Numbers: ER07–752–000
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits a supplemental generation agreement with City of Burlingame dated as of 4/11/07.
Filed Date: 04/16/2007.
Accession Number: 20070418–0009
Comment Date: 5 p.m. Eastern Time on Monday, May 07, 2007.

Docket Numbers: ER07–753–000
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits a supplemental generation agreement with City of Herington dated as of 4/12/07.
Filed Date: 04/16/2007.
Accession Number: 20070418–0010
Comment Date: 5 p.m. Eastern Time on Monday, May 07, 2007.

Docket Numbers: ER07–754–000
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits supplemental generation agreement with City of Horton dated as of 4/9/07.
Filed Date: 04/16/2007.
Accession Number: 20070418–0011
Comment Date: 5 p.m. Eastern Time on Monday, May 07, 2007.

Docket Numbers: ER07–755–000
Applicants: Westar Energy, Inc.
Description: Westar Energy Inc submits a Supplemental Generation Agreement under FERC Electric Tariff Volume 14 with Osage City dated as of 4/10/07.
Filed Date: 04/16/2007.
Accession Number: 20070418–0013
Comment Date: 5 p.m. Eastern Time on Monday, May 07, 2007.

Docket Numbers: ER07–756–000
Applicants: Westar Energy, Inc.
Description: Westar Energy Inc submits a Supplemental Generation Agreement under FERC Electric Tariff Volume 15 with the City of Wamego, dated as of 4/12/07.
Filed Date: 04/16/2007.
Accession Number: 20070418–0012
Comment Date: 5 p.m. Eastern Time on Monday, May 07, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7795 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 77–163]

Pacific Gas and Electric Company; Notice of Availability of Environment Assessment

April 18, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, the Office of Energy Projects has reviewed various proposals regarding restoration of water used for frost protection to Lake Pillsbury, part of the Potter Valley Project. The Potter Valley Project is located on the Eel River and East Branch Russian River (EBRR), in northern California. An environmental assessment (EA) has been prepared.

In the EA, the Commission's staff concludes that restoration of water to Lake Pillsbury, used by the Potter Valley Irrigation District from March 15 through April 14, 2007 for frost protection, would not constitute a major

federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a Commission order titled ''Order on Restoration of Water to Lake Pillsbury,'' issued April 18, 2007, and is available at the Commission's Public Reference Room. A copy of the EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (P–77) in the docket field to access the document. For assistance, call (202) 502–8222 or (202) 502–8659 (for TTY).

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7804 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–320–000]

California Interstate Gas Company; Notice of Technical Conference

April 18, 2007.

Take notice that the Commission will convene a technical conference in the referenced proceeding on Tuesday, May 8, 2007, at 10 a.m. (EDT), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's March 30, 2007 order [1] directed that a technical conference be held to address the issues raised by Colorado Interstate Gas Company's (CIG) February 28, 2007 tariff filing to reflect a quarterly adjustment to its lost and unaccounted-for (L&U) and other fuel gas reimbursement percentage.

Commission Staff and parties will have the opportunity to discuss all of the issues raised by CIG's filing including, but not limited to, technical, engineering and operational issues, CIG's justification and support for inclusion of the costs associated with the gas lost at the Fort Morgan storage field, and issues related to the interpretation and applicability of tariff provisions governing L&U and other fuel gas and liability for losses.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Debbie-Anne Reese at (202) 502–8758 or e-mail *Debbie-Anne.Reese@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7805 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

[1] Colorado Interstate Gas Company, 118 FERC ¶ 61,265 (2007).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–320–000]

Colorado Interstate Gas Company; Notice of Technical Conference

April 19, 2007.

Take notice that the Commission will convene a technical conference in the above-referenced proceeding on Tuesday, May 8, 2007, at 10 a.m. (EDT), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's March 30, 2007 Order [1] directed that a technical conference be held to address the issues raised by Colorado Interstate Gas Company's (CIG), February 28, 2007 tariff filing to reflect a quarterly adjustment to its lost and unaccounted-for (L&U) and other fuel gas reimbursement percentage.

Commission Staff and parties will have the opportunity to discuss all of the issues raised by CIG's filing including, but not limited to, technical, engineering and operational issues, CIG's justification and support for inclusion of the costs associated with the gas lost at the Fort Morgan storage field, and issues related to the interpretation and applicability of tariff provisions governing L&U and other fuel gas and liability for losses.

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All interested persons are permitted to attend. For further information please contact Debbie-Anne Reese at (202) 502–8758 or e-mail *Debbie-Anne.Reese@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7864 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

[1] Colorado Interstate Gas Co., 118 FERC ¶ 61,265 (2007).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–569–000]

Transcontinental Gas Pipe Line Corp.; Notice of Informal Settlement Conference

April 19, 2007.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 9 a.m. (EST) on Thursday, May 3, 2007, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For additional information, please contact Bill Collins at (202) 502–8248, *william.collins@ferc.gov* or Irene Szopo at (202) 502–8323, *irene.szopo@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7863 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD07–7–000]

Conference on Competition in Wholesale Power Markets; Supplemental Notice of Conference

April 19, 2007.

As announced in the Notice of Conference issued on March 23, 2007,[1] the Federal Energy Regulatory Commission will hold a conference on Tuesday, May 8, 2007, to examine specific topics relating to the state of wholesale power markets. The conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, from 9 a.m. to 5 p.m. Eastern time. The conference will be open for the public to attend and advance registration is not required. Members of the Commission may attend the conference.

The agenda for this conference is attached, and contains questions the panelists will be asked to address. If any changes to the agenda occur, a revised agenda will be posted on the calendar page for this event on the Commission's Web site, *http://www.ferc.gov,* prior to the event.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript.

A free webcast of this event will be available through www.ferc.gov. Anyone with Internet access who desires to view this event can do so by navigating to www.ferc.gov's Calendar of Events and locating this event in the Calendar. The event will contain a link to its Web cast. The Capitol Connection provides technical support for the Web casts. It also offers access to this event via television in the Washington, DC area and via phone bridge for a fee. Visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at the Capitol Connection 703–993–3100 for information about this service.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For further information on the technical conference, please contact: Robert Hellrich-Dawson (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6360, *robert.hellrich-dawson@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–7869 Filed 4–24–07; 8:45 am]

BILLING CODE 6717–01–P

[1] 72 Fed. Reg. 14,801 (March 29, 2007).

DEPARTMENT OF ENERGY

Western Area Power Administration

Notice of Proposed Final Resource Adequacy Plan for Transactions in the California Independent System Operator Corporation's Balancing Authority Area

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed final resource adequacy plan.

SUMMARY: The Western Area Power Administration (Western) is conducting a public process to propose a Final Resource Adequacy (RA) Plan for transactions in the California Independent System Operator Corporation's (CAISO) Balancing Authority Area. Pending the development of this Final RA Plan, Western has established interim RA Plans to facilitate its transactions in the CAISO Balancing Authority Area. Western is developing this proposed Final RA Plan as a Local Regulatory Authority (LRA). The Final RA Plan implemented by Western will be submitted to the CAISO and will be utilized by Western when Western is acting as a Load Serving Entity (LSE) in the CAISO Balancing Authority Area.

Western's Current RA Plan became effective on September 30, 2006, and will remain in effect until superseded by the Final RA Plan developed in this process.

DATES: The consultation and comment period will begin on the date of publication of this **Federal Register** notice and will end on May 25, 2007. Western will present a detailed explanation of the proposed Final RA Plan at a public information forum on May 2, 2007, 1:30 p.m. PDT, Rancho Cordova, CA. Western will hold a public comment forum on May 9, 2007, 1:30 p.m. PDT, Rancho Cordova, CA. At the public comment forum, the public may provide oral and written comments. In addition, the public may submit written comments to Western at any time during the comment period. Western must receive all comments by the close of the comment period to ensure they are considered. After the Administrator approves the Final RA Plan, it is anticipated that it will go into effect on July 17, 2007.

ADDRESSES: Western will hold the public information and comment forums at the Marriott, 11211 Point East Drive, Rancho Cordova, CA. Written comments can be mailed, faxed, or e-mailed to Ms. Sonja A. Anderson, Acting Power Marketing Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, fax (916) 985–1931, e-mail *sanderso@wapa.gov.* Oral comments must be presented at the public comment forum which will be held on May 9, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne Haas, Contracts and Energy Services Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, telephone (916) 353–4438, e-mail *haas@wapa.gov.*

SUPPLEMENTARY INFORMATION:

Authorities

Western is developing this proposed Final RA Plan in accordance with its power marketing authorities, which includes the Act of June 17, 1902 (32 Stat. 388), the Act of August 26, 1937 (50 Stat. 844), the Act of August 4, 1939 (53 Stat. 1187), and the Department of Energy Organization Act of August 4, 1977 (91 Stat. 565), including all acts amendatory and/or supplementary to the above listed.

Background

On February 9, 2006, the CAISO filed its comprehensive Market Redesign Technology Upgrade (MRTU) Tariff with the Federal Energy Regulatory Commission (Commission).[1] Under the MRTU Tariff, the CAISO proposed to end the current ''must offer'' structure and transition to a capacity-based system. In this capacity-based system, the California Public Utilities Commission (CPUC) and other LRAs establish procurement requirements for all LSEs within their jurisdiction to obtain sufficient resources to meet their load with an adequate reserve margin and to ensure appropriate resources will be made available to the CAISO in the Day-Ahead Market, the Hour-Ahead

[1] FERC Docket ER06–615 (2006).

Scheduling Process, and Real-Time Market.[2]

On March 13, 2006, the CAISO filed its Interim Reliability Requirements Program (IRRP). On May 12, 2006, the Commission issued an order accepting certain modifications under the IRRP in Docket No. ER06–723–000.[3] The modifications established under the IRRP are intended to implement RA programs developed by the CPUC and other LRAs for LSEs under their respective jurisdictions. Section 40 of the IRRP and the MRTU Tariff provide the guidelines for RA. The IRRP adjusts the CAISO's existing operations to incorporate RA programs implemented by the CPUC and other LRAs for the period between June 2006 and the implementation of MRTU.[4]

In the Commission's September 21, 2006, decision in Docket No. ER–06–615–000, which in large part accepted and affirmed the CAISO's proposed MRTU Tariff, the Commission summarized the CAISO's RA program as follows:

> Resource adequacy is the availability of an adequate supply of generation or demand responsive resources to support safe and reliable operation of the transmission grid. Until June 2006, the CAISO market did not require load serving entities to procure sufficient generation capacity to serve their customers. The lack of this requirement jeopardized reliability and made it difficult to ensure that wholesale prices would remain just and reasonable. Under MRTU, load serving entities under the authority of the California Public Utilities Commission will be required to obey its requirement to maintain a level of capacity above load-serving entities' forecasted customer needs (currently 15–17 percent). They will also have to demonstrate a year in advance that they have procured resources to cover 90 percent of their summer (May through September) peak period needs. Other load serving entities that are CAISO members and serve customers in the CAISO control are required to comply with the planning reserve margin for capacity that is set by their Local Regulatory Authority. If the Local Regulatory Authority does not establish such a margin, the default margin will be 15 percent. These resource adequacy requirements will help ensure sufficient supply, enhance reliability, protect against price volatility, and reduce the opportunities to game the market that exist when electricity supplies are insufficient to meet customers' needs.[5]

In Paragraph 1116 of the same decision, the Commission concluded that meeting the MRTU RA requirements is a reasonable condition of participation in the CAISO markets and required that each LSE serving load within the CAISO-controlled grid maintain adequate resources and not ''lean on'' others to the detriment of its customers and grid reliability as a whole. Under the current schedule, the MRTU is not expected to be implemented before February 2008.

Under both the IRRP and MRTU Tariffs, Western is an LRA. To ensure non-discriminatory treatment for transactions in the CAISO Balancing Authority Area, Western, as an LRA, established an interim RA Plan comprised of an Initial RA Plan and its Current RA Plan. Western's Current RA Plan can be found at *http://www.wapa.gov/sn/marketing/racapacity.asp.* However, due to the short time frame between the acceptance of the CAISO's IRRP and its effective date, Western was unable to conduct a public process before implementing its interim RA Plans.[6]

Under this notice, Western is initiating a public process to develop its Final RA Plan. As part of this process, Western is soliciting input from its customers and interested parties. The schedule for this process is outlined above. The Final RA Plan will be applicable under both the IRRP and MRTU Tariff.

Acronyms and Definitions

As used throughout the remainder of this notice, the following acronyms and definitions when used with initial capitalization, whether singular or plural, will have the following meanings:

Administrator: The Administrator of the Western Area Power Administration.

Applicable Reliability Criteria: As defined by the CAISO Tariff: The reliability standards established by NERC, WECC, and Local Reliability Criteria as amended from time to time, including any requirements of the NRC.

Balancing Authority: As defined by NERC: The responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time.

Balancing Authority Area: The collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

CAISO/ISO: The California Independent System Operator Corporation.

Capacity: The electrical capability of a generator, transformer, transmission circuit, or other equipment.

Commission: The Federal Energy Regulatory Commission.

Current RA Plan: That plan submitted by Western, acting as its own LRA, to the CAISO in September 2006.

CVP: The Central Valley Project—The multipurpose Federal water and power project extending from the Cascade Range in northern California to the plains along the Kern River south of the city of Bakersfield, California.

Demand Forecast: An estimate of Capacity required to meet a load over a designated period of time.

DOE: United States Department of Energy.

Energy: Measured in terms of the work it is capable of doing over a period of time; electric energy is usually measured in kilowatthours or megawatthours.

Final RA Plan: The plan that Western, acting as its own LRA, will submit to the CAISO after this process.

First Preference Customer: A customer wholly located in Trinity, Calaveras, or Tuolumne counties, California, as specified under the Trinity River Division Act (69 Stat. 719) and the New Melones provisions of the Flood Control Act of 1962 (76 Stat. 1173, 1191–1192).

Full Load Service Customers: The subset of Western's Preference customers that has contracted with Western to provide Portfolio Management services and meet their total projected loads.

Initial RA Plan: That plan submitted by Western, acting as its own LRA, to the CAISO on May 19, 2006.

LD Contract: Liquidated Damages Contract—Firm liquidated damages contracts are those transactions utilizing or consistent with Service Schedule C of the Western Systems Power Pool Agreement or the Firm Liquidated Damages product of the Edison Electric Institute pro forma agreement, or any other similar firm Energy contract that does not require the seller to source the Energy from a particular unit and specifies a delivery point internal to the CAISO Balancing Authority Area.

Local Capacity Area: As defined by the CAISO Tariff: Transmission constrained area as defined in the study referenced in Section 40.3.1.

Local Capacity Area Resources: As defined by the CAISO Tariff: RA Capacity from a Generating Unit listed in the technical study or Participating Load that is located within a Local Capacity Area capable of contributing toward the amount of capacity required in a particular Local Capacity Area.

[2] See Article V, Section 40 of the CAISO's Tariff.

[3] 115 FERC ¶ 61,172 (2006).

[4] Id. at paragraph 6.

[5] 116 FERC ¶ 61,274 (2006) at paragraph 10.

[6] The Commission accepted the filing on May 12, 2006, with an effective date of May 12, 2006.

LRA: Local Regulatory Authority—The Federal, state or local governmental authority responsible for the regulation or oversight of a utility.

LSE: Load-Serving Entity—As defined by the CAISO Tariff: Any entity (or the duly designated agent of such an entity, including; *e.g.*, a Scheduling Coordinator), including a load aggregator or power marketer; (i) Serving End Users within the ISO Control Area and (ii) that has been granted authority or has an obligation pursuant to California State or local law, regulation, or franchise to sell electric energy to End Users located within the ISO Control Area, or (iii) is a Federal Power Marketing Authority that serves retail Load.

Planning Reserve Margin: As defined by the CAISO Tariff: A Planning Reserve Margin shall be that quantity or percentage of capacity in megawatts (MW) that exceeds the Demand Forecast as set forth in Section 40.3 as provided for in Section 40.4 of this ISO Tariff.

Power: Capacity and energy.

Preference: The requirements of Reclamation Law which provide that preference in the sale of Federal power be given to certain entities, such as municipalities and other public corporations or agencies and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 (Reclamation Project Act of 1939, Section 9(c), 43 U.S.C. 485h(c)).

Project Use: The power used to operate CVP or Washoe Project facilities in accordance with authorized purposes and pursuant to Reclamation Law.

Qualifying Capacity: As defined by the CAISO Tariff: The maximum capacity of an RA Resource. The criteria for calculating Qualifying Capacity from RA Resources may be established by the CPUC or other applicable Local Regulatory Authority and provided to the CAISO, or default provisions in Section 40.13 of this ISO Tariff.

RA: Resource Adequacy—As defined by the CAISO Tariff: The program that ensures that adequate physical generating capacity dedicated to serving all load requirements is available to meet peak demand and planning and operating reserves, at or deliverable to locations and at times as may be necessary to ensure local area reliability and system reliability.

RA Capacity: Resource Adequacy Capacity—As defined by the CAISO Tariff: The generation capacity of an RA Resource listed on an RA Plan and a Supply Plan.

RA Plan: Resource Adequacy Plan—As defined by the CAISO Tariff: A submission by a Scheduling Coordinator for a Load-Serving Entity serving Load in the ISO Control Area in order to satisfy the requirements of Section 40 of this ISO Tariff.

RA Resource: As defined by the CAISO Tariff: A resource that is required to offer RA Capacity. The criteria for determining the types of resources that are eligible to provide Qualifying Capacity may be established by the CPUC, other applicable Local Regulatory Authority and provided to the CAISO, or the default provision in Section 40.13 of this ISO Tariff.

Reclamation: United States Department of Interior, the Bureau of Reclamation.

SC: Scheduling Coordinator—As defined by the CAISO Tariff: An entity certified by the ISO for the purposes of undertaking the functions specified in Section 4.5.3 of the ISO Tariff.

Western: United States Department of Energy, the Western Area Power Administration.

Development of RA Plans

As described above, the CAISO has established guidelines for RA and RA Capacity, which LSEs must meet for transactions in the CAISO Balancing Authority Area. Both the IRRP and MRTU Tariff acknowledge that Western, as an LRA, may establish its own RA Plan.[7]

Western understands that the California State Legislature enacted Assembly Bill (AB) 380 to require the CPUC, in consultation with the CAISO, to establish RA requirements for all LSEs under the CPUC's jurisdiction.[8] AB 380 requires LSEs subject to the CPUC's jurisdiction to procure adequate resources to meet their peak demands, planning, and operating reserves.[9] The State requires LSEs subject to the CPUC's jurisdiction to demonstrate that they have acquired sufficient capacity to serve their forecasted retail customer load and a 15–17 percent margin. As a Federal agency, Western is not subject to the State's jurisdiction.

Western has reviewed these guidelines, the Commission's decisions, and considered Federal and industry standards and guidelines related to reliable operations of power systems. Western prepared both an Initial RA Plan and a Current RA Plan based on the guidelines and direction provided by the Commission, the IRRP, and the MRTU Tariff, which conform to Western's practices from an operational, contractual, and statutory framework. There are several distinct factors related specifically to the way that Western conducts its business that influenced Western's preparation of its RA Plans. Both the Initial RA Plan and the Current RA Plan contain detailed information on the factors that went into Western's development of those RA Plans. As stated in the **SUMMARY** section of this **Federal Register** notice, the Current RA Plan will remain in effect until superseded by the Final RA Plan developed in this process. Western provides as part of this **Federal Register** notice, the pertinent factors that influenced Western's preparation of its Initial RA Plan and its Current RA Plan.

The United States CVP hydro facilities are operated by Reclamation. The CVP Act, as amended, integrates the various CVP facilities. The CVP is operated primarily to meet authorized project purposes that have a higher priority than power generation, such as irrigation and flood control. These purposes are determined by Federal law. Western's flexibility to modify generation schedules and ancillary service availability is limited by these and other related constraints. Congress authorized the Pacific Northwest-Southwest Alternating Current Intertie (PACI) to firm the CVP and authorized the California-Oregon Transmission Project (COTP) to support the DOE Laboratories and other Federal uses in the State of California.[10] Western imports power into its sub Balancing Authority Area over the PACI, COTP, and other Federal transmission facilities. In northern California, Western markets power from a dozen Federal dams including those in the Federal CVP under its 2004 Power Marketing Plan (Marketing Plan). Under the Marketing Plan, Western executed the majority of its power sales contracts with its statutory preference and First Preference Customers in late 1999 and early 2000. In northern California, Western has established a contract-based sub Balancing Authority Area within the Sacramento Municipal Utility District (SMUD) Balancing Authority Area. Unlike many LSEs Western serves a diverse group of customers in northern California, including large municipal utilities such as SMUD, the City of Redding, and the City of Santa Clara, as well as smaller irrigation districts, Native American Indian Tribes, and Federal and State agencies. These customers are located within the CAISO Balancing Authority

[7] See, *e.g.*, Section 40.4 of MRTU Tariff, Section 40.5 of IRRP Tariff.

[8] 115 FERC ¶ 61,172 at paragraph 4.

[9] Id.

[10] Pub. L. No. 88–552, 78 Stat. 756 (1964), as amended; Pub. L. No. 98–360, 98 Stat. 403 (1984), as amended, 50 Stat. 844 (1937), as amended.

Area, the Turlock Irrigation District Balancing Authority Area, the SMUD Balancing Authority Area, and Western's own sub Balancing Authority Area. Many of Western's customers are wholesale customers who are LSEs for their own customers. Other Western customers receive power from both Western and another utility, such as the Pacific Gas and Electric Company (PG&E). Under Western's Marketing Plan, and from a contractual standpoint, Western serves its loads in the CAISO Balancing Authority Area from its sub Balancing Authority Area. The statutes and Marketing Plan referenced above are not within the scope of this public process, and reference to the statutes and Marketing Plan are only being included as a background for the development of Western's RA Plans. Within this framework, Western developed its RA Plans. Western refers interested parties to the Current RA Plan for a more thorough analysis of the background for the development of Western's Current RA Plan.

Although not specifically stated in Western's Current RA Plan, Western has procured its RA Capacity under both the Initial RA Plan and the Current RA Plan from qualifying resources either inside or outside of the CAISO Balancing Authority Area. These RA Capacity purchases meet CAISO Tariff, Section 40, requirements. Western will include in its Final RA Plan a statement that Western may continue to procure its RA Capacity using qualifying resources either inside or outside the CAISO Balancing Authority Area that meet CAISO Tariff, Section 40, requirements. For imports, Western will reserve firm transmission to the tie point on Western's transmission system to assure delivery compliance. Western believes this proposed addition to the Current RA Plan is consistent with the CAISO's proposed guidelines for meeting RA Capacity requirements.

In addition, Western proposes to use LD Contracts to meet its RA Capacity requirements. By allowing LD Contracts to be used, this gives Western a second option to meet its RA Capacity requirements. Western is unable to use the CVP hydroelectric facilities in the SMUD Balancing Authority Area to meet RA Capacity requirements because, in contrast to other utilities and non-jurisdictional LSEs in California, Western must follow Federal directives in its marketing and operations. The CVP hydroelectric facilities are owned by Reclamation and operated primarily to meet authorized project purposes that have a higher priority than power generation. Western's flexibility to modify generation schedules and ancillary service availability is limited by these and other related constraints.

The customers that are located in the CAISO Balancing Authority Area for which the RA Capacity will be procured include Western's Full Load Service Customers, Western's four First Preference Customers, the National Aeronautics and Space Administration Ames (NASA Ames) Research Center, and a subset of Reclamation's Project Use Customers. Collectively, these loads are projected to have a monthly peak demand of between 280 MW and 350 MW during the October 2006 through December 2007 period. The RA Capacity procured meets the collective requirements of this pool of customers. The table below shows the monthly amounts of RA Capacity that have been procured for the period October 2006 through December 2007.

TABLE 1.—RA CAPACITY PROCURED AND SUPPLIERS FOR OCTOBER 2006 THROUGH DECEMBER 2007

Month	RA capacity (MW)	Supplier
2006		
October	15	PG&E.
November	15	PG&E.
December	15	PG&E.
2007		
January	16	PG&E.
February	16	PG&E.
March	16	PG&E.
April	16	PG&E.
May	16	Coral Power (Coral).
June	36	Coral.
July	36	Coral.
August	36	Coral.
September	36	Coral.
October	16	PG&E.
November	16	PG&E.
December	16	PG&E.

If, as a result of this process, Western's procurement of RA Capacity is modified, such modification will be reflected in the Final RA Plan that Western will supply to the CAISO.

Western's RA Plans

Initial RA Plan

The CAISO, under Section 40 of both the IRRP and the MRTU Tariff, established the guidelines for RA for LSEs for transactions in the CAISO Balancing Authority Area. The Commission's May 12, 2006, IRRP Order accepted the CAISO proposal to utilize the CPUC's default criteria of 15–17 percent RA Capacity for entities subject to the CPUC's jurisdiction. In that same Order, the Commission acknowledged that other LRAs may develop their own RA Plans.[11] The CAISO required a filing by May 22, 2006, for the June 2006 RA Capacity.

Western reviewed these guidelines, the Commission's decisions, and considered Federal and industry standards and guidelines related to reliable operations of power systems. Based on these criteria, Western, as a CPUC non-jurisdictional LRA, prepared an Initial RA Plan for Western's transactions in the CAISO Balancing Authority Area and submitted it to the CAISO on May 19, 2006. The RA Capacity standards in the Initial RA Plan were as follows:

For purposes of this LRA Plan, Western will phase in its Planning Reserve Margin requirements, as defined in the CAISO Tariff, as follows:

Operative date	Planning reserve margin (percent)
October 1, 2006	5
February 1, 2007	10
June 1, 2007	15

For its month-ahead showing, Western will demonstrate that it is prepared to meet 100 percent of its forecasted monthly coincident peak load.

Consistent with its Initial RA Plan, Western issued a Request for Proposal (RFP) for RA Capacity and procured sufficient capacity on August 29, 2006, to meet its 5-percent requirement for October through December 2006.

Current RA Plan

In its September 21, 2006, decision, the Commission stated:

> Other Load serving entities that are CAISO members and serve customers in the CAISO control area are required to comply with the planning reserve margin for capacity that is set by their LRA. If the LRA does not establish such a margin, the default margin will be 15 percent.[12]

After reviewing the Commission's September 21, 2006, decision, Western revised its Initial RA Plan in September 2006 to modify its Planning Reserve Margin. In its Current RA Plan, Western opted to provide 10-percent RA Capacity June through September and 5-percent RA Capacity in all other months.

The Current RA Plan provides as follows:

[11] 115 FERC ¶ 61,172 at paragraph 53.

[12] 116 FERC ¶ 61,274 at para. 10.

Consistent with the CAISO Tariff, Western will make a year-ahead showing that it has a minimum of 90 percent of the capacity required to meet its forecasted monthly coincident peak load in the CAISO Control Area, as determined by Western, plus its Planning Reserve Margin. Under the CAISO IRRP approach, the Planning Reserve Margin is a percentage of firm capacity over the demand forecast available to the CAISO to meet reserve requirements. Western has determined that for the purposes of this LRA Plan, it will provide capacity to the CAISO consistent with the CAISO's planning reserve criteria as follows:

Operative months	Planning reserve capacity (percent)
June–September	10
January–May & October–December	5

For its month-ahead showing, Western will demonstrate that it is prepared to meet 100 percent of its forecasted monthly coincident peak load.

Western has further determined that it will conduct a public process to provide its customers and other interested parties the opportunity to provide input to Western with regard to the amount and character of RA Capacity it will provide in the future.

Consistent with the Current RA Plan, Western issued an RFP for RA Capacity and procured sufficient capacity on September 28, 2006, to meet the above requirement for calendar year (CY) 2007.

Other notable provisions of Western's Current RA Plan are:

1. Western has designated CVP hydroelectric facilities in the SMUD Balancing Authority Area as a system resource, with 100 percent of forecasted capacity considered to be Qualifying Capacity. The amount of Qualifying Capacity for each month is determined utilizing Western's rolling 12-month forecast at a 50-percent probability of exceedance for the appropriate month. Imports of CVP generation into the CAISO Balancing Authority Area are firm, backed by operating reserves as required by the Western Electricity Coordinating Council (WECC) and the North American Electric Reliability Council (NERC) standards. Western will not make CVP capacity available to the CAISO for scheduling in the Day-Ahead or Real-Time markets for RA purposes due to specific Federal statutes, regulations, and policies which Western must follow in its marketing and operations processes.

2. Western has designated 100 percent of its contract deliveries (existing and future LD Contracts) as Qualifying Capacity.

Proposed Final RA Plan

Western proposes that beginning in 2008 and beyond, Western will continue to follow the procedures and standards identified in the Current RA Plan. However, Western proposes the following two modifications to the Current RA Plan:

1. Western will procure RA Capacity from qualifying resources either inside or outside of the CAISO Balancing Authority Area. In order to qualify, a resource must meet CAISO Tariff, Section 40, requirements, and for imports, Western will reserve firm transmission to the tie point on Western's transmission system to assure delivery compliance.

2. Western is proposing that it may opt to designate some of its contract deliveries (existing and future LD Contracts) as RA Capacity. These contracts are backed by reserves in the originating Balancing Authority Area and are, therefore, considered firm. Western has existing firm transmission rights on the PACI and COTP for contracts originating in the Northwest, and the remaining contracts have delivery points in North Path 15 (NP15), which are firmed by the CAISO or self provided by the supplier under CAISO Tariff guidelines.

Western, as an LRA, will file its Final RA Plan with the CAISO. When Western acts as an LSE for transactions in the CAISO Balancing Authority Area, Western will comply with its Final RA Plan.

Request for Comments

The Final RA Plan adopts Western's Current RA Plan with the addition of the two items described above. Western seeks input from interested stakeholders on the Current RA Plan as it will be incorporated into the Final RA Plan. Western's Current RA Plan can be found at: *http://www.wapa.gov/sn/marketing/racapacity.asp.* You may also request a copy of the Current RA Plan by (1) Mailing a request to Ms. Jeanne Haas at 114 Parkshore Drive, Folsom, CA 95630; (2) e-mailing a request to *haas@wapa.gov*; or (3) telephoning a request to Ms. Jeanne Haas at (916) 353–4438.

As part of this proceeding, Western requests comments on its proposed Final RA Plan. The comments must be within the scope of this proceeding. Western is asking for specific comments on the following:

Types of Resources for RA Capacity

An LRA has discretion on the type of resource to use to provide RA Capacity. Section 40 of the CAISO Tariff allows an LRA to provide its own criteria for determining qualifying resource types and the Qualifying Capacity from such resources.

In addition, Section 40 of the MRTU Tariff has an additional requirement not prescribed in the IRRP Tariff. Under the MRTU Tariff, LRAs must also consider Local Capacity Area Resources requirements (Local RAR) to be made available to the CAISO. The CAISO has stated in Section 40.3.1 of the MRTU Tariff that the CAISO will collaborate with the CPUC, LRAs within the CAISO Balancing Authority Area, and other market participants to establish the parameters, assumptions, and other criteria to be used and described in the technical study that permit compliance with Applicable Reliability Criteria.

For Local RAR requirements, Western has completed an analysis of its loads and concluded that a minimal amount of Western CAISO loads may be subject to additional charges associated with this requirement. Given the size of these loads and the limited exposure to costs, Western is not anticipating the need to procure local RA Capacity associated with this requirement. Western will continue to monitor the Local RAR process as new information becomes available to determine if this approach needs to be revisited.

In its May 12, 2006, Order in Docket No. ER06–723–000, the Commission stated ''WAPA, as an LRA, can determine the extent to which liquidated damages contracts count toward its RA requirements.'' [13] Western, as an LRA, has submitted both an Initial RA Plan and its Current RA Plan with its own standards for meeting its Qualifying Capacity requirements including its RA Capacity standards, which have been provided to the CAISO.

Congress authorized the construction of both the PACI and the COTP so Western could import power from the Pacific Northwest. Currently, Western imports this power into its sub Balancing Authority Area. Included in the power Western imports are LD Contracts. Western further notes that LD contracts are backed by reserves in the originating Balancing Authority Area and are, therefore, considered firm. Western has existing transmission rights on the PACI and the COTP for the contracts originating in the Northwest, and the remaining contracts have delivery points in NP15, which are firmed by the CAISO or self provided by the supplier under CAISO Tariff guidelines.

[13] 115 FERC ¶ 61,172 at para. 98.

Western proposes to include the following as RA Capacity resources:

1. LD Contracts with firm transmission to a tie point if it is an import.

2. RA Capacity procured from qualifying resources either inside or outside the CAISO Balancing Authority Area. In order to qualify, a resource must meet CAISO Tariff, Section 40, requirements, and for imports, Western will reserve firm transmission to the tie point on Western's system to assure delivery compliance.

Western requests comments on the inclusion of these resources, if other resources should be included, or whether certain resources listed above should be excluded. After considering the comments received during this process, Western will establish a final list of types of resources which, as an LRA, Western will include as part of its Final RA Plan.

As part of this proceeding, Western requests comments on the types of RA Capacity, including Local RAR that Western should be procuring on behalf of its loads in the CAISO Balancing Authority Area.

Amount of RA Capacity To Be Procured

Section 40 of both the IRRP and the MRTU Tariff allow an LRA to establish its own criteria for the establishment of its Planning Reserve Margins. Western is committed to meeting operating reserve requirements consistent with WECC and NERC standards. Within Western's sub Balancing Authority Area, Western has sufficient resources to reliably operate and balance the loads and resources consistent with prudent utility practice. Western's loads on the CAISO's transmission grid, for which Western is the LSE, are less than 1 percent (peak demand estimate of 350 MW) of the overall demand of the CAISO transmission grid (CAISO's 2007 Summer Assessment estimated at 47,000 MW). Western has procured RA Capacity consistent with the standards identified in the Current RA Plan through 2007, which is 10 percent June through September and 5 percent in all other months, based on projected monthly peak customer loads.

Western proposes that beginning in 2008 and beyond, Western will continue to procure RA Capacity in the same manner as is identified in the Current RA Plan (10 percent June through September and 5 percent in all other months). This proceeding will determine Western's standards for meeting the CAISO's RA Capacity requirements in Section 40 of the IRRP and MRTU Tariff in the future. Once this process has concluded, Western will review its Current RA Plan and, based on the comments received, may make modifications before submitting a Final RA Plan to address future procurement of RA Capacity.

As part of this proceeding, Western requests comments on the amount (monthly percentage) of RA Capacity it should procure in the future.

Allocation of Costs for RA Capacity

Under Western's current methodology, Western is allocating the monthly costs associated with its procurements of RA Capacity on a load ratio share basis to the loads in the CAISO Balancing Authority Area for which the RA Capacity was procured. These customers include Western's Full Load Service Customers, Western's four First Preference Customers, the NASA Ames Research Center, and a subset of Reclamation's Project Use Customers. Under the current allocation methodology, all of these loads are allocated a respective share of RA Capacity costs based on their projected load levels in the months that are covered by the current procurements. Western believes it is appropriate to allocate these costs to these customers since Western, as the LSE, incurs these charges to schedule with the CAISO on behalf of these customers.

Western proposes that beginning in 2008 and beyond, Western will continue to allocate the monthly costs associated with its procurements of RA Capacity on a load ratio share basis to the loads that are receiving the benefits of those procurements.

As part of this proceeding, Western requests comments on whether to maintain the existing methodology for allocating costs among customers for RA Capacity costs or to implement a new methodology. Western requests that comments to change the methodology contain reasons for the change.

Western will address all comments within the scope of these proceedings in its **Federal Register** notice implementing a Final RA Plan. The **Federal Register** notice will be published prior to the effective date of the Final RA Plan.

Normally, the final plan would be effective 30 days after Administrator approval. In this instance, after the Administrator approves the Final RA Plan, Western anticipates the effective date of the Final RA Plan will be July 17, 2007. Western's Final RA Plan must be in place by this date to align Western's procurement process with the CAISO's required annual showing for CY 2008 by September 30, 2007. This allows Western to be competitive in the RA Capacity market.

On the effective date, the Final RA Plan will replace the Current RA Plan. As discussed in the body of this notice, the Final RA Plan may differ from the CPUC's or other LRA's RA Plan. Western's Final RA Plan is being developed by Western as an LRA and is intended to only apply to Western, acting as an LSE in the CAISO Balancing Authority Area. It is not meant to apply to other LSEs in the CAISO Balancing Authority Area. Those LSEs are subject to the authority of the CPUC or other LRAs and, as such, are outside of Western's jurisdiction.

Availability of Information

All studies, comments, letters, memorandums, or other documents made or kept by Western for developing the final plan, will be made available for inspection and copying at Western's Sierra Nevada Region Office, located at 114 Parkshore Drive, Folsom, CA 95630–4710.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500 through 1508); and the Integrated DOE NEPA Implementing Procedures (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: April 18, 2007.

Timothy J. Meeks,

Administrator.

[FR Doc. E7–7870 Filed 4–24–07; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2007–0341; EPA–HQ–OARM–2007–0342; FRL–8305–9]

Agency Information Collection Activities; Proposed Collection; Comment Request; Conflict of Interest Rule #1, EPA ICR Number 1550.06, OMB Control Number 2030–0023; and Invitation for Bids and Request for Proposals (IFBs and RFPs), EPA ICR Number 1038.11, OMB Control Number 2030–0006

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew existing approved Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). These ICRs are scheduled to expire on 07/31/2007. Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before June 25, 2007.

ADDRESSES: Submit your comments, identified by the Docket ID numbers provided for each item in the text, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *oei.docket@epa.gov.*
- Mail: OEI Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: EPA Docket Center, Environmental Protection Agency, OEI Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to the Docket ID number provided for each item in the text. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Tiffany Schermerhorn, Policy, Training and Oversight Division, Office of Acquisition Management, Mail Code 3802R, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; e-mail address: *schermerhorn.tiffany@epa.gov*, telephone (202) 564–9902.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for each of the ICRs identified in this document (see the Docket ID numbers for each ICR that is provided in the text), which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744 and the telephone number for the OEI Docket is 202–566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the Docket ID number identified in this document.

What Information Is EPA Particularly Interested In?

Pursuant to Section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25 employees) for examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under DATES.

7. To ensure proper receipt by EPA, be sure to identify the Docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activities or ICRs Does This Apply To?

[Docket ID No. EPA–HQ–OARM–2007–0341]

Affected entities: Entities potentially affected by this action are those businesses or organizations performing contracts for the Agency.

Title: Conflict of Interest, Rule #1.

ICR numbers: EPA ICR No. 1550.06, OMB Control No. 2030–0023.

ICR status: This ICR is currently scheduled to expire on 07/31/07. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: EPA contractors will be required to disclose business relationships and corporate affiliations to determine whether EPA's interests are jeopardized by such relationships. Because EPA has the dual responsibility of cleanup and enforcement and because its contractors are often involved in both activities, it is imperative that contractors are free from conflicts of interest so as not to prejudice response and enforcement actions. Contractors will be required to maintain a database of business relationships and report information to EPA on either an annual basis or when each work order is issued.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1,078 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. *This includes:* the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 135.

Frequency of response: On occasion.

Estimated total annual burden hours: 145,640.

Estimated total annual costs: $8,144,585. This includes an estimated burden cost of $8,144,585 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

Although the number of respondents has increased since the ICR was last renewed and approved by OMB in 2004, the total annual burden hours and annual costs are not expected to increase. The number of respondents has increased due to a need to include non-Superfund as well as Superfund contractors in our information collection activities related to conflicts of interest. While this ICR was initiated due to the need to ensure that contractors supporting work under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), commonly known as ''Superfund,'' are free from conflict so as not to prejudice CERCLA actions, it has become clear in the past few years that the potential for conflict is not limited to contracts supporting Superfund activities, but includes all Agency contracts involving support of regulatory activities. Other environmental laws besides Superfund that give the Agency the authority for its programs and regulatory activities include, but are not limited to, the Clean Water Act (CWA); Safe Drinking Water Act (SDWA); Marine Protection, Research and Sanctuary Act (MPRSA); Clean Air Act (CAA); Resource Conservation and Recovery Act (RCRA); Oil Pollution Act (OPA); Pollution Prevention Act (PPA); Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); Superfund Reauthorization and Amendments Act (SARA); Toxic Substance Control Act (TSCA); Federal Facility Compliance Act (FFCA); National Environmental Policy Act (NEPA); Emergency Planning and Community Right-to-Know Act (EPCRA); Comprehensive Environmental Response, Asbestos Hazard Emergency Response Act (AHERA); and the Mercury-Containing and Rechargeable Battery Management Act (Battery Act). Despite the increase in the number of respondents, the total annual burden hours are not expected to increase because this is an established information collection effort and most of the respondents are engaged primarily in the recurring maintenance and reporting activities rather than the one-time activities of greater burden that were necessary when the ICR was initiated. Also, the processes for storing, retrieving, and reporting information on a recurring basis have been streamlined in recent years through greater use of electronic methods.

[Docket ID No. EPA–HQ–OARM–2007–0342]

Affected entities: Entities potentially affected by this action are those businesses or organizations that want to provide the EPA with supplies or services.

Title: Invitation for Bids and Request for Proposals.

ICR numbers: EPA ICR No. 1038.11, OMB Control No. 2030–0006.

ICR status: This ICR is currently scheduled to expire on 07/31/07. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: EPA requires contractors to submit information in order to be considered for the award of a contract. Information requested includes: prices for the supplies/services requested, information on past performance, technical and cost information, and general financial and organizational information. Information provided by vendors in response to an RFP/IFB is used to evaluate which vendor will provide the best product in terms of quality, timeliness and price. Responses to IFBs/RFPs are required to be considered for a contract award. The legal authority for this collection is 41 U.S.C. 253. Contractor confidential business information submitted in connection with an IFB or RFP response is protected from public release in accordance with 40 CFR 2.201 *et seq.*

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 8 hours per response for IFBs and 251 hours per response for RFPs. Burden means the

total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 981.

Frequency of response: On occasion.

Estimated total annual burden hours: 219,015.

Estimated total annual costs: $14,251,635. This includes an estimated burden cost of $14,251,635 and an estimated cost of $0 for capital investment or maintenance and operational costs.

What Is the Next Step in the Process for These ICRs?

EPA will consider the comments received and amend the ICRs as appropriate. The final ICR packages will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICRs to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: April 19, 2007.

Daniel Humphries,

Acting Manager, Acquisition Policy and Training Service Center.

[FR Doc. E7–7894 Filed 4–24–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-0038; FRL-8125-8]

BeakerTree Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to BeakerTree Corporation in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). BeakerTree Corporation has been awarded multiple contracts to perform work for OPP, and access to this information will enable BeakerTree Corporation to fulfill the obligations of the contract.

DATES: BeakerTree Corporation will be given access to this information on or before April 30, 2007.

FOR FURTHER INFORMATION CONTACT: Felicia Croom, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-0786; e-mail address: *croom.felicia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-0038. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Contractor Requirements

Under Contract No. EP-W-06-096, under this contract number, the contractor shall provide meeting support for the Science Review Panel. This involves providing detailed records of the science review panel comments and input to revised risk assessments. EFED conducts workshops on technical subjects to discuss the issues and to determine how the experts in the field feel these issues should be handled. A workshop may be the best way to draw conclusions and determine EFED's direction on handling and closing the issues.

The OPP has determined that the contract described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contracts with BeakerTree Corporation, prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, BeakerTree Corporation is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to BeakerTree Corporation until the requirements in this document have been fully satisfied. Records of information provided to BeakerTree Corporation will be maintained by EPA Project Officers for these contracts. All information supplied to BeakerTree Corporation by EPA for use in connection with these contracts will be returned to EPA when BeakerTree Corporation has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts,

Government property, Security measures.

Dated: April 17, 2007.

Robert A. Forrest,

Acting Director, Office of Pesticide Programs.

[FR Doc. E7–7765 Filed 4–24–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0038; FRL–8125–2]

Syracuse Environmental Research Associates, Inc., Syracuse Research Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation, have been awarded a contract to perform work for OPP, and access to this information will enable Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation, to fulfill the obligations of the contract.

DATES: Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation, will be given access to this information on or before April 30, 2007.

FOR FURTHER INFORMATION CONTACT: Felicia Croom, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-0786; e-mail address: *croom.felicia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0038 Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Contractor Requirements

Under Contract No. EP-W-07-025, Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation, will access FIFRA/CBI data in the preparation of assessments and characterizations of pesticides. The assessments and characterizations will assess drinking water and its risk to humans and nonhumans. Assessment production support would include developing full ecological risk assessments and or drinking water exposure assessments, preparing sections of risk assessments, investigating a specific issue or problem related to a risk assessment, or conducting literature searches for data on individual chemicals or groups of chemicals to augment existing data sets. An ecological risk assessment in OPP evaluates the likelihood that adverse ecological effects may occur as a result of exposure to a pesticide. It includes three primary phases: Problem formulation, analysis, and risk characterization. A drinking water assessment generally includes a discussion of the pesticide usage including application methods and rates, and geographical areas of use, the occurrence exposure data used to assess exposure, a description of the models and scenarios used to estimate concentration in both surface water and ground water, and a discussion of the uncertainty and data gaps.

The OPP has determined that access by Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation, to information on all pesticide chemicals may be necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation, are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation Staff, until the requirements in this document have been fully satisfied. Records of information provided to Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation Staff, will be maintained by EPA Project Officers for this contract. All information supplied to Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation Staff, by EPA for use in connection with this contract will be returned to EPA when Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation Staff, have completed their work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: April 16, 2007.

Robert Forrest,

Acting Director, Office of Pesticide Programs.

[FR Doc. E7–7879 Filed 4–24–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8304–7]

Meeting of the Ozone Transport Commission

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the 2007 Annual Meeting of the Ozone Transport Commission (OTC). This OTC meeting will explore options available for reducing ground-level ozone precursors in a multi-pollutant context.

DATES: The meeting will be held on June 6–7, 2007 starting at 9 a.m. and ending at 5 p.m.

ADDRESSES: Renaissance Providence Hotel, 5 Avenue of the Arts, Providence, Rhode Island 02903; (800) 617–2893.

FOR FURTHER INFORMATION CONTACT: Questions regarding the agenda and registration for this meeting and all press inquiries should be directed to Kromeklia Bryant, Ozone Transport Commission/MANE–VU Office, 444 North Capitol Street, NW., Suite 638, Washington, DC 20001; (202) 508–3840; e-mail: *ozone@otcair.org*; Web site: *http://www.otcair.org*.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the ''Control of Interstate Ozone Air Pollution.'' Section 184(a) establishes an ''Ozone Transport Region'' (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the Ozone Transport Commission is to deal with ground-level ozone formation, transport, and control within the OTR.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (202) 508–3840; by e-mail: *ozone@otcair.org* or via the OTC Web site at *http://www.otcair.org*.

Dated: April 17, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7–7898 Filed 4–24–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8305–6]

Science Advisory Board Staff Office Notification of an Upcoming Teleconference of the Ethylene Oxide (EtO) Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the SAB Ethylene Oxide (EtO) Review Panel.

DATES: A public teleconference of the SAB Ethylene Oxide (EtO) Review Panel will be held from 1 p.m. to 4 p.m. Eastern Time on May 29, 2007.

ADDRESSES: The public teleconference will take place via telephone only.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number and access code to participate in the teleconference may contact Dr. Sue Shallal, EPA Science Advisory Board Staff (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone/voice mail: (202) 343–9977 or via e-mail at *shallal.suhair@epa.gov*. Technical Contact: The technical contact in EPA's Office of Research and Development (ORD) is Dr. Henry Kahn. He can be reached at (202) 564–3269, or *kahn.henry@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background: EPA's Office of Research and Development (ORD) had requested that the SAB peer review the Agency's draft assessment, ''Evaluation of the Carcinogenicity of Ethylene Oxide''. Background on this SAB review and the process for formation of this review panel was provided in a **Federal Register** Notice published on November 14, 2006 (71 FR 219; 66328–66329). Additional information can also be found at the following URL: *http://www.epa.gov/sab/panels/ethylene_oxide_rev_panel.htm*. The purpose of this upcoming teleconference is for the SAB Review Panel to discuss its draft review report. A meeting agenda and the draft SAB review report will be posted at the above noted URL prior to the meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the EtO Review Panel to consider during the advisory process.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact Dr. Shallal, DFO, in writing (preferably via e-mail), by May 21, 2007, at the contact information noted above, to be placed on the list of public speakers for this meeting.

Written Statements: Written statements should be received in the SAB Staff Office by May 21, 2007, so that the information may be made available to the Panel for their consideration prior to this teleconference. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature (optional), and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Shallal at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: April 19, 2007.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E7–7891 Filed 4–24–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8305–5]

Science Advisory Board Staff Office Notification of a Meeting of the Science Advisory Board Homeland Security Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public face-to-face meeting of the SAB Homeland Security Advisory Committee (HSAC) to consult on two developing projects: the Emergency Consequence Assessment Tool (ECAT), and the Preliminary Microbial Risk Assessment Methodologies (MRA).

DATES: The meeting dates are Wednesday, May 30, 2007, from 9 a.m. to 6 p.m. and Thursday, May 31, 2007 from 8:30 a.m. to 12 noon (eastern standard time).

ADDRESSES: The meeting will be held at the U.S. EPA Science Advisory Board

Staff Office Conference Room, Third Floor, 1025 F Street, NW., Suite 3700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information about this meeting may contact Ms. Vivian Turner, Designated Federal Officer (DFO), by mail at EPA SAB Staff Office (1400F), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone at (202) 343–9697; by fax at (202) 233–0643; or by e-mail at *turner.vivian@epa.gov*. The SAB mailing address is: U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB, as well as any updates concerning the meeting announced in this notice, may be found on the SAB Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background

EPA's National Homeland Security Research Center (NHSRC) is developing an interactive online risk assessment and management software tool to provide health advisors and other emergency response officials with rapid access to critical information during an environmental emergency or training exercise. The Emergency Consequence Assessment Tool (ECAT) is designed to assess and provide site-specific numeric estimates of health risks for selected chemical, biological and radiological threat agents; and identify what response actions might be appropriate to mitigate health risks. Additionally, NHSRC is conducting research to assist program offices and decision-makers in: (1) Assessing the hazard and risk of exposure to highly toxic chemical and biological agents after deliberate contamination, and (2) deriving decontamination goals for cleanup and re-entry to contaminated buildings. One of the most important issues in regards to biological threat agents is the development of a risk assessment methodology to accomplish these goals. Currently, there is no consensus-based methodology for evaluating biological contaminants and establishing cleanup levels. To address this gap, the research being conducted is evaluating the strengths and weaknesses of existing biological risk assessment methods and tools to develop a preliminary incident-based Microbial Risk Assessment (MRA) Framework. The preliminary MRA framework represents an initial template and decision tool that addresses information gathering and decision support activity to conduct risk assessment over projected time intervals following the incident. The MRA framework is organized to support initial site assessment followed by more in-depth hazard and exposure assessment methodologies as additional site and hazard information is accumulated from the ongoing investigations and sampling analyses. Two primary goals of the framework are to address the uncertainties of the many unknown variables associated with biothreat agents and deriving preliminary acceptable decontamination goals other than ''zero''. In the context of deriving safe cleanup levels for biothreat agents, the applicability and quality of existing data on biological organisms and the research conducted to fill critical gaps in this data are key to continued progress in this area. The NHSRC has requested the SAB to provide technical advice regarding the development of ECAT and MRA. The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator. The SAB HSAC will be augmented with other SAB members to conduct these consultations through the Chartered SAB. The HSAC will provide advice to the Agency on the preliminary versions of the ECAT and the MRA and early recommendations for the future development and application of both.

Availability of Meeting Materials

A roster of committee members, their biographical sketches, and the meeting agenda will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of this meeting. Dr. Kevin Garrahan (*garrahan.kevin@epa.gov*) is the technical contact for ECAT and Dr. Tonya Nichols (*nichols.tonya@epa.gov*) is the technical contact for MRA. Access to ECAT and MRA materials will be available on the NHSRC Web site: *http://www.epa.gov/nhsrc.*

Procedures for Providing Public Input

Interested members of the public may submit relevant written or oral information for the SAB to consider during the advisory process.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than one hour for all speakers. Interested parties should contact Ms. Turner, DFO, at the contact information provided above, by May 23, 2007, to be placed on the public speaker list for the May 30–31, 2007 meeting.

Written Statements: Written statements should be received in the SAB Staff Office by May 23, 2007, so that the information may be made available to the SAB for their consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature at the mailing address provided above, and one electronic copy via e-mail to *turner.vivian@epa.gov* (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Meeting Accommodations

For information on access or services for individuals with disabilities, please contact Ms. Vivian Turner at (202) 343–9697, or via e-mail at *turner.vivian@epa.gov*. To request accommodation of a disability, please contact Ms.Turner, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: April 19, 2007.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E7–7893 Filed 4–24–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0943; FRL–8122–1]

Mecoprop-p Risk Assessments; Notice of Availability and Request for Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments, and related documents for the pesticide mecoprop-p, and opens a public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for mecoprop-p through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration decisions. Through this program, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before June 25, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0943, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0943. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Rosanna Louie, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0037; fax number: (703) 308-8005; e-mail address: *louie.rosanna@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for mecoprop-p, a phenoxy pesticide, and soliciting public comment on risk management ideas or proposals. Mecoprop-p is a herbicide frequently co-formulated with other phenoxy herbicides for annual and perennial broadleaf weeds and brush control in industrial and residential areas. These sites include: drainage ditch banks, golf courses, greenhouse ornamentals, ornamental turf/lawns (institution, industrial, and residential), rights-of-way, roadsides, and sod farms. EPA developed the risk assessments and risk characterization for mecoprop-p through a modified version of its public process for making pesticide reregistration eligibility decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by

the Food Quality Protection Act of 1996 (FQPA).

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for mecoprop-p. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as typical use rate data, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for mecoprop-p. Risks of concern associated with the use of mecoprop-p are potential effects to some terrestrial and aquatic organisms. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to mecoprop-p, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819)(FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For mecoprop-p, a modified, 4-Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its few complex issues. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for mecoprop-p. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 12, 2007.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–7676 Filed 4–24–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0244; FRL–8125–6]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

DATES: The deletions are effective by October 22, 2007 or May 25, 2007 for registrations for which the registrant requested a waiver of the 180–day comment period. The Agency will consider withdrawal requests postmarked no later than October 22, 2007 or May 25, 2007, whichever is applicable. Comments must be received on or before October 22, 2007 or May 25, 2007, for those registrations where the 180–day comment period has been waived.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before October 22, 2007 or May 25, 2007 for registrations for which the registrant requested a waiver of the 180–day comment period.

ADDRESSES: Submit your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2007–0244, by one of the following methods:

- *Mail:* Attention: John Jamula, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: John Jamula, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6426; e-mail address: *jamula.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0244 Publicly available docket materials are available either in

the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in Table 1 of this unit by registration number, product name, active ingredient, and specific uses deleted:

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDES

EPA Reg. No.	Product Name	Active Ingredient	Delete From Label
000352–00342	DuPont Lannate SP Insecticide	Methomyl	Strawberry
000352–00384	DuPont Lannate LV Insecticide	Methomyl	Strawberry
000432–1288	Baygon Technical	Propoxur	Crack and Crevice Use
000769–00978	AllPro Baracide 5PS Pelleted Herbicide	Sodium Chlorate	Right-of-Ways
004787–00033	Cheminova Methyl Parathion Technical	Methyl Parathion	Cabbage, Dried Beans, Dried Peas, Hops, Lentils, Pecans, and Sugar Beets
066222–00003	Pyrinex 4EC	Chlorpyrifos	All Fire Ant Uses
066222–00005	Pyrinex 2E	Chlorpyrifos	All Fire Ant Uses
066222–00006	Pyrinex 2E Insecticide	Chlorpyrifos	All Fire Ant Uses
066222–00018	Chlorpyrifos 15G	Chlorpyrifos	All Fire Ant Uses
066222–00019	Chlorpyrifos 4E AG	Chlorpyrifos	All Fire Ant Uses
073049–00274	Pyrenone W.B. 5.0 – 0.5	Pyrethrins	Food Use
073409–00101	SBP–1382 T.E.C. 6%	Resmethrin	Food Use

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before October 22, 2007 or May 25, 2007 for registrations for which the registrant requested a waiver of the 180–day comment period, to discuss withdrawal of the application for amendment. This time period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion. A request to waive the 180–day comment period has been received for the following registrations: 432–1288; 769–978;66222–3; 66222–5; 66222–6; 66222–18; 66222–19 4787–33.

Table 2 of this unit includes the names and addresses of record for all registrants of the products listed in Table 1 of this unit, in sequence by EPA company number.

TABLE 2—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE PRODUCTS

EPA Company no.	Company Name and Address
000352	E. I. Du Pont De Nemours & Co., Inc., Dupont Crop Protection (s300/427), PO Box 30, Newark, DE 19714–0030
000432	Bayer Environmental Science, A Business Group of Bayer Cropscience LP, PO Box 12014, Research Triangle Park, NC 27709
000769	Value Gardens Supply, LIC, d/b/a Value Garden Supply, Po Box 585, Saint Joseph, MO 64502
004787	Cheminova Inc., Agent For: Cheminova A/S, 1600 Wilson Blvd., Suite 700, Arlington, VA 22209–2510
066222	Makhteshim-Agan of North America Inc., 4515 Falls of Neuse Rd Ste 300, Raleigh, NC 27609
073049	Valent Biosciences Corp., 870 Technology Way, Suite 100, Libertyville, IL 60048–6316

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the

Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to John Jamula using the methods in **ADDRESSES**. The Agency will consider written withdrawal requests postmarked no later than October 22, 2007.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 12, 2007.

Robert Forrest,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. E7–7769 Filed 4–24–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2004–0032; FRL–8124–3]

Formetanate Hydrochloride; Modification and Closure of Interim Reregistration Eligibility Decision; Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's intention to modify certain risk mitigation measures that were imposed as a result of the 2006 Interim Reregistration Eligibility Decision (IRED) for the pesticide formetanate hydrochloride (HCl). EPA conducted this reassessment of the formetanate HCl IRED in response to comments received regarding endpoints chosen for the assessment. The Agency agreed that the toxicity endpoints fo human health risk assessment should be re-evaluated. Hence, the resulting assessment modified the mitigation listed in the IRED. Therefore, on formetanate HCl labels, there will be no requirement for closed cabs for applicators using air-blast sprayers on orchard fruit and the Restricted Entry Intervals are modified for alfalfa (from 9 to 4 days), pome and stone fruit (from 8 to 5 days) and citrus fruit (from 10 to 9 days).

FOR FURTHER INFORMATION CONTACT: James Parker, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 306-0469; fax number: (703) 308-7070; e-mail address: *parker.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2004–0032. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

II. Background

A. What Action is the Agency Taking?

In 2006, EPA issued an IRED for formetanate HCl under section 4(g)(2)(A) of FIFRA. Subsequent to publication of this IRED, the technical registrant submitted additional information and comments regarding the risk assessments. After reviewing comments received from the registrant (Gowan Company), regarding the use of bench mark dose (BMD) modeling as an appropriate method for selecting the inhalation toxicity endpoint and concerns for the dermal endpoint selected, the Agency reassessed and consequently modified its original dermal and inhalation points of departure of 0.1 mg/kg for inhalation and 10 mg/kg for dermal to 0.18 mg/kg for the inhalation endpoint and 15 mg/kg for dermal. This change in endpoint selection resulted in acceptable Margins of Exposure (MOEs) for orchard air-blast applications when using double layer Personal Protective Equipment (PPE). Furthermore, the Restricted Entry Intervals (REIs) were reduced (from 9 to 4 days for alfalfa, 8 to 5 days for pome and stone fruit and 10 to 9 days for citrus fruit). The Agency has also updated the formetanate HCl IRED including a Response to Comments memorandum and an updated label table.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, formetanate HCl was reviewed through the modified 4-Phase public participation process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for formetanate HCl.

There were already two public comment periods for formetanate HCl and this updated IRED document addresses all issues which were raised during earlier comment periods. The Agency therefore is issuing the updated IRED for formetanate HCl without an additional comment period.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 12, 2007.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–7766 Filed 4–24–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0255; FRL–8122–9]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address: *greenway.denise@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0255. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

II. EUP

EPA has issued the following EUP:

73049–EUP–3. Issuance. Valent BioSciences Corporation, 870 Technology Way, Libertyville, IL 60048. This EUP allows the use of a total of 15,873 pounds of the plant regulator S-Abscisic acid over a three-year period on 240 acres of ornamental plants to evaluate the experimental product's effectiveness to delay wilting by reducing transpiration in the treated ornamental plants. The program is authorized only in the States of Arizona, California, Colorado, Florida, Georgia, Illinois, Michigan, Minnesota, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Washington, and Wisconsin. The EUP is effective from February 28, 2007 to March 1, 2010.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: April 16, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E7–7888 Filed 4–24–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0702; FRL–8116–4]

Final Stipulated Injunction and Related Information Involving Pesticides and the California Red-Legged Frog; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On October 20, 2006, the Federal District Court for the Northern District of California issued a Stipulated Injunction, resolving a lawsuit filed by the Center for Biological Diversity against EPA, alleging that EPA failed to comply with section 7(a)(2) of the Endangered Species Act by not ensuring that its registration of 66 named pesticide active ingredients will not jeopardize the California red-legged frog, a federally-listed Threatened species. Key terms of the Stipulated Injunction are summarized as follows: a Court-ordered schedule for EPA to make effects determinations for the 66 named pesticides; interim injunctive measures regarding EPA's authorization of uses of the 66 pesticides in certain parts of 33 counties in California; and the development and distribution of a bilingual brochure regarding certain aspects of the injunction, pesticides and frogs. Today, EPA announces the availability on its Web site (*www.epa.gov/espp*) of the bilingual brochure, along with maps and guidance regarding the interim injunctive measures ordered by the Court.

FOR FURTHER INFORMATION CONTACT: Arty Williams, Environmental Fate and Effects Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7695; fax number: (703) 305-6309; e-mail address: *williams.arty@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to the Center for Biological Diversity, CropLife America, American Forest and Paper Association, Western Plant Health Association, Oregonians for Food and Shelter, and Syngenta Crop Protection, Inc., other public interest groups, state regulatory partners, other interested federal agencies, other pesticide registrants and

pesticide users. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0702. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

II. Background

On April 2, 2002, the Center for Biological Diversity (CBD) filed a lawsuit in Federal District Court for the Northern District of California, alleging that EPA failed to comply with section 7(a)(2) of the Endangered Species Act by not ensuring that its registration of 66 named pesticide active ingredients will not affect the California red-legged frog, a federally-listed threatened species. CBD, EPA, and defendant-intervenors CropLife America, American Forest and Paper Association, Western Plant Health Association, Oregonians for Food and Shelter, and Syngenta Crop Protection, Inc. engaged in discussions to try to resolve the case.

On September 1, 2006, EPA issued a notice in the **Federal Register** (71 FR 52073; FRL–8090–9), announcing the availability of a proposed Stipulated Injunction, and opening a 15–day public comment period on the draft. EPA received numerous comments from the public, California state agencies, and others, regarding certain aspects of the proposed Stipulated Injunction. These comments, as well as the proposed and final versions of the Stipulated Injunction, are available at regulations.gov in the public docket, ID number EPA–HQ–OPP–2006– 0702.

Based on public comments received and subsequent discussion with CBD and defendant-intervenors, the federal government agreed to the Stipulated Injunction with a modification to the definition of ''upland habitat'' in section 3(b) of the injunction to conform this definition, which applies outside designated critical habitat, with the definition of ''upland habitat'' used by the U.S. Fish and Wildlife Service in its designation of critical habitat for this species (71 FR 19244-19346, April 13, 2006).

On October, 13, 2006, the Federal Government joined CBD and defendant-intervenors in asking the Court to issue a Stipulated Injunction resolving the lawsuit. The Court ordered the Stipulated Injunction on October 20, 2006. The key provisions of the Stipulated Injunction are listed below.

1. *Schedule for effects determinations*: The Stipulated Injunction establishes a series of deadlines for the Agency to make ''effects determinations'' for 66 named pesticides to determine their potential effect on the California red-legged frog (a threatened species native to California).

2. *Interim injunctive relief*: The Stipulated Injunction also (with some exceptions) enjoins, vacates and sets aside EPA's authorization of uses of the 66 pesticides in certain parts of 33 counties in California. The injunctive relief, vacatur, and setting aside of EPA's authorizations would terminate for a particular use of a pesticide when the Agency makes a determination that the pesticide's use has ''no effect'' on the California red-legged frog, or, where EPA determined the pesticide's use may affect the species, when EPA completes consultation with the U.S. Fish and Wildlife Service.

3. *Development and distribution of a bilingual brochure*: The injunction also requires EPA to develop and distribute a bilingual (English and Spanish) brochure regarding certain aspects of the injunction, the California red-legged frog and frogs in general, and pesticides. EPA is required to distribute this brochure to all commercial certified applicators within California; to all private certified applicators residing in counties where use authorizations have been set aside; to registrants of the 66 pesticides; the California Departments of Pesticide Regulation, and Fish and Game; and the Pacific Region of U.S. Fish and Wildlife Service. In addition, EPA is to distribute 250 copies of the brochure to the County Agricultural Commissioner and Cooperative Extension Agent offices in the affected counties.

In addition to distributing the bilingual brochure as required by the Stipulated Injunction, EPA has made this brochure available on its Web site (*www.epa.gov/espp*). Further, EPA has developed and posted on its Web site maps of the areas in California where the injunctive relief applies and information to assist pesticide users in determining whether particular areas are within the scope of the Stipulated Injunction. The full text of the Stipulated Injunction and other related materials are also available at that Web site.

List of Subjects

Environmental protection, Endangered species.

Dated: April 17, 2997.

Steve Bradbury,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. E7–7764 Filed 4–24–07; 8:45 am]

BILLING CODE 6560–50–S

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application to finance the export of approximately $29.5 million in U.S. machine tooling equipment to a company in China. The U.S. exports will enable the Chinese company to establish production of 180 metal-stamping dies per year. These products will be utilized by companies in China to manufacture medium- to large-sized auto body parts. A portion of this new production will be employed internally by the Chinese company itself to manufacture medium-to large-sized auto body parts for sale to Chinese automobile manufacturers/assemblers. No automobiles will be produced by this Chinese firm. This Chinese company's average annual production capacity of auto body parts will be enough to contribute to the production of approximately 380,000 automobiles per year during the 7-year repayment term of the loan. Available information indicates that all of this new Chinese production will be consumed in China. Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue, NW., Room 1238, Washington, DC 20571, within 14

days of the date this notice appears in the **Federal Register**.

Helene S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. E7–7924 Filed 4–24–07; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

April 20, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 25, 2007. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Jasmeet K. Seehra, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3123, or via fax at 202–395–5167 or via Internet at *Jasmeet_K._Seehra@omb.eop.gov* and to *Judith-B. Herman@fcc.gov*, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., DC 20554 or an e-mail to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0261.

Title: Section 90.215, Transmitter Measurements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 191,698 respondents; 450,754 responses.

Estimated Time per Response: 2 minutes (.033 hours).

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 4,958 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this information collection to OMB as an extension (no change in recordkeeping requirements) during this comment period to obtain the full three-year clearance from them. The Commission has adjusted the number of respondents and total annual burden hours due to an increase in the number of licensees subject to this rule requirement.

Section 90.215 requires station licensees to measure the carrier frequency, output power, and modulation of each transmitter authorized to operate with power in excess of two watts when the transmitter is initially installed and when any changes are made which would likely affect the modulation characteristics. Such measurements, which help ensure proper operation of transmitters, are to be made by a qualified engineering measurement service, and are required to be retained in the station records, along with the name and address of the engineering measurement service, and the person making the measurements.

The information is normally used by the licensee to ensure that equipment is operating within the prescribed tolerances. Prior technical operation of transmitters helps limit interference to other users and provides the licensee with the maximum possible utilization of equipment.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–7929 Filed 4–24–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

April 13, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 25, 2007. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Jasmeet K. Seehra, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3123, or via fax at 202–395–5167 or via Internet at *Jasmeet_K._Seehra@omb.eop.gov* and to *Judith-B. Herman@fcc.gov*, Federal Communications Commission, Room

1–B441, 445 12th Street, SW., DC 20554 or an e-mail to *PRA@fcc.gov.* If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0800.

Title: FCC Application for Assignment of Authorization or Transfer of Control: Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau.

Form No.: FCC Form 603.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 32,551 respondents; 32,551 responses.

Estimated Time per Response: .50–1.75 hours.

Frequency of Response: Recordkeeping requirement and on occasion reporting requirement.

Obligation to Respond: Mandatory.

Total Annual Burden: 36,621 hours.

Total Annual Cost: $3,092,295.

Privacy Act Impact Assessment: Yes.

Nature and Extent of Confidentiality: This information collection contains personally identifiable information (PII). The FCC has a system of records (SORN), FCC/WTB–1, ''Wireless Services Licensing Record,'' to cover the collection, maintenance, use(s), and destruction of this PII, which respondents may provide to the FCC as part of the information collection requirement(s). This SORN was published in the **Federal Register** on April 5, 2006 (71 FR 17234, 17269).

Needs and Uses: The Commission will submit this information collection to OMB as a revision during this comment period to obtain the full three-year clearance from them. The Commission is reporting a program change increase for this information collection because the bureau has added a new page 5 to Schedule A of FCC Form 603. The number of respondents has increased that will have to complete that part of the form if they are submitting information for Gross Revenue for Attributable Material Relationship (AMR Entity). The bureau also updated the phone numbers, email addresses and other pertinent information on the form.

The Commission uses the information in FCC Form 603 to determine whether the applicant is legally, technically and financially qualified to obtain a license. Without such information, the Commission cannot determine whether to issue the licenses to the applicants that provide telecommunications services to the public, and therefore, to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended. Information provided on this form will also be used to update the database and to provide for proper use of the frequency spectrum.

OMB Control Number: 3060–1058.

Title: FCC Application or Notification for Spectrum Leasing Arrangement or Private Commons Agreement: Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau.

Form No.: FCC Form 608.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 1,593 respondents; 1,593 responses.

Estimated Time per Response: .50–1.75 hours.

Frequency of Response: Recordkeeping requirement and on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 7,965 hours.

Total Annual Cost: $1,309,446.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR Section 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection to OMB as a revision during this comment period to obtain the full three-year clearance from them. The Commission is reporting a program change increase for this information collection because the bureau has added a new page 5 to Schedule A of FCC Form 608. The number of respondents has increased that will have to complete that part of the form if they are submitting information for Gross Revenue for Attributable Material Relationship (AMR Entity). The bureau also updated the phone numbers, email addresses and other pertinent information on the form.

The required notifications and applications will provide the Commission with useful information about spectrum usage and help to ensure that licensees and lessees are complying with Commission interference and non-interference related policies and rules. Similar information and verification requirements have been used in the past for licensees operating under authorizations, and such requirements will serve to minimize interference, verify that lessees are legally and technically qualified to hold licenses, and ensure compliance with Commission rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–7932 Filed 4–24–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011843–003.

Title: ELJSA/ZIM Cross Space Charter and Sailing Agreement.

Parties: Evergreen Line Joint Service Agreement (''ELJSA'') and Zim Integrated Shipping Services, Ltd.

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway; Suite 3000; New York, NY 10006–2802.

Synopsis: The amendment replaces Italia Marittima with ELJSA as a party to the agreement.

Agreement No.: 011938–004.

Title: HSDG/Alianca/CSAV/Libra/CLNU Cooperative Working Agreement.

Parties: Hamburg-Sud (''HSDG''); Alianca Navegacao e Logistica Ltda. e CIA (''Alianca''); Compania Sud Americana de Vapores, S.A.; Companhia Libra de Navegacao; and Montemar Maritima S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would reduce the total number of slots being exchanged, clarify weight calculations with respect to those slots, and increase the number of slots to be chartered to HSDG/Alianca. The parties request expedited review.

Agreement No.: 011969–002.

Title: Zim/ELJSA Agreement.

Parties: Zim Integrated Shipping Services, Ltd. and Evergreen Line Joint Service Agreement (''ELJSA'').

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway; Suite 3000; New York, NY 10006–2802.

Synopsis: The amendment replaces Italia Marittima with ELJSA as a party to the agreement.

Agreement No.: 011996.

Title: Gulf, Central America and Caribbean Vessel Sharing Agreement.

Parties: Compania Sud Americana de Vapores (''CSAV'') and Compania Chilena de Navegacion Ineroceanica S.A. (''CCNI'').

Filing Party: Walter H. Lion, Esq.; McLaughlin & Stern, LLP; 260 Madison Ave; New York, NY 10016.

Synopsis: The agreement authorizes the parties to cross charter space between the U.S. Gulf Coast and ports in Central America and the Caribbean.

Dated: April 20, 2007.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E7–7916 Filed 4–24–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011956–003.

Title: IDX Vessel Sharing Agreement.

Parties: Emirates Shipping Line FZE; Shipping Corporation of India, Ltd.; Orient Overseas Container Line Ltd.; Evergreen Line Joint Service Agreement (''ELJSA''); and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment replaces Italia Marittima with ELJSA as a party to the agreement.

Dated: April 20, 2007.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E7–7931 Filed 4–24–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 07–04]

Norland Industries, Inc., Linna Textiles Manufacturing Limited, Medcorp Distributors, Inc., Malan Garment Limited, and Malan Garment, Inc. v. Reliable Logistics, LLC; Notice of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (''Commission'') by Norland Industries, Inc., Linna Textiles Manufacturing Limited, Medcorp Distributors, Inc., Malan Garment Limited, and Malan Garment, Inc. (''Complainants''), against Reliable Logistics, LLC. (''Respondent''). Complainants assert that Norland Industries, Inc., Medcorp Distributors, Inc., and Malan Garment, Inc. are corporations or other business entities formed and existing under the laws of the State of New York, and Linna Textiles Manufacturing Limited and Malan Garment Limited are corporations or other business entities under the laws of a foreign nation. Complainants assert that all Complainants are related entities engaged in the business of importing into and trading cargoes of clothing within the United States of America. Complainants allege that Respondent Reliable Logistics, LLC is a corporation, limited liability company or entity engaged in the business of acting as a non-vessel operating common carrier, freight forwarder, bailee and/or warehouseman for hire. Complainants state that they hired Respondent to provide certain transportation related services for a number of import shipments of clothing and department store merchandise. Complainants assert that on or about April 20, 2004, Respondent abruptly, and without notice, informed Complainants that it no longer desired to provide transportation services to Complainants and that it wished to terminate their business relationship. Complainants allege that, in its attempt to terminate its business relations with Complainants, Respondent wrongfully seized twelve (12) of Complainants' containers, allegedly as leverage for wrongful demand of immediate payment of all invoices for freight and other charges, notwithstanding the extension of credit and thirty (30) day payment terms to Complainants. Through payments and under protest, Complainants were able to secure eleven (11) of the seized containers.

Complainants contend that the actions of Respondent violate Section 10(d) of the Shipping Act by failing to establish, observe, and enforce just and reasonable regulations and practices in connection with transportation services on three counts: (1) $71,274 in damages to Complainants for the price of goods and duty paid on the container Respondent maintained control of; (2) $314,037.05 in damages to Complainants for actions Complainants were forced to take to retain customers after missing buying/purchasing seasons and delivery windows for the cargo Respondent maintained control of; and (3) $96,720 in damages to Complainants for loss of Visa documentation which Respondent allegedly did not surrender to Complainants. Complainants request the Commission issue an Order for Reparations in the Complainants' favor for $71,274.91 for the first count; $314,037.05 for the second count; $96,720 for the third count; and grant such other proper and further relief the Commission deems appropriate.

This proceeding has been assigned to the Office of the Administrative Law Judges. Pursuant to the Commission's Rules of Practice and Procedure, 46 CFR 502.181 (Subpart K—Shortened Procedure) Complainants have requested that their complaint be handled on an expedited basis. Under this procedure, with the consent of the parties and with the approval of the presiding officer, this proceeding may be conducted under shortened procedure without oral hearing, except that a hearing may be ordered by the presiding officer at the request of either party to the proceeding or at the presiding officer's discretion. Within 25 days of the date of service of the complaint, Respondent shall, if they consent to the shortened procedure, file with the Commission and serve on the Complainants, their answering memorandum of facts and arguments relied upon. Within 15 days after the date of service of Respondent's answering memorandum, Complainants may file with the Commission and serve on the Complainants, their reply. This will close the record for decision unless the presiding officer orders the submission of additional evidentiary material. If Respondent does not consent to this shortened procedure, the matter will be governed by 46 CFR 502.61 (Subpart E—Proceedings, Pleadings, Motions, Replies). Pursuant to the further terms of 46 CFR 502.61,

the initial decision of the presiding officer in this proceeding shall be issued by April 18, 2008, and the final decision of the Commission shall be issued by August 18, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E7–7913 Filed 4–24–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 017096N.
Name: Aero Costa International, Inc.
Address: 22010 S. Wilmington Ave., Ste. 208, Carson, CA 90745.
Date Revoked: April 6, 2007.
Reason: Failed to maintain a valid bond.

License Number: 019499N.
Name: Anmi Air & Sea Transportation, Inc.
Address: 8066 Northwest 66th Street, Miami, FL 33166.
Date Revoked: April 13, 2007.
Reason: Failed to maintain a valid bond.

License Number: 019900N.
Name: Atlantic Freight Services Inc.
Address: PMB 519 RD 19, Guaynabo, PR 00966–2700.
Date Revoked: April 13, 2007.
Reason: Failed to maintain a valid bond.

License Number: 016783N.
Name: C & A Shipping, Inc.
Address: 100 Menlo Park, Ste. 326, Edison, NJ 08827.
Date Revoked: April 12, 2007.
Reason: Failed to maintain a valid bond.

License Number: 018861N.
Name: Central American Shipping Agency Inc.
Address: 55 West Main Street, Freehold, NJ 07728.
Date Revoked: April 7, 2007.
Reason: Failed to maintain a valid bond.

License Number: 003706NF.
Name: Chesapeake Bay Shipping and Warehousing, Inc.
Address: 3914 Vero Road, Baltimore, MD 21227.
Date Revoked: February 12, 2007.
Reason: Failed to maintain valid bonds.

License Number: 019025N.
Name: Ever-OK International Forwarding Co., Ltd.
Address: 430 South Garfield Ave., Ste. 403, Alhambra, CA 91801.
Date Revoked: April 15, 2007.
Reason: Failed to maintain a valid bond.

License Number: 017269N.
Name: Fastmark Corporation.
Address: 7206 NW 84th Avenue, Miami, FL 33166.
Date Revoked: April 11, 2007.
Reason: Failed to maintain a valid bond.

License Number: 010854NF.
Name: Logistics Service (U.S.A.) Co., Inc.
Address: 55 Second Street, 2nd Floor, San Francisco, CA 94105.
Date Revoked: April 9, 2007.
Reason: Surrendered license voluntarily.

License Number: 017159N.
Name: Nolton Freight Logistics, Inc.
Address: 520 Carson Plaza Ct., Ste., 212, Carson, CA 90746.
Date Revoked: April 12, 2007.
Reason: Failed to maintain a valid bond.

License Number: 014569N.
Name: RCS Freight International, Inc.
Address: 20410 Gramercy Place, Torrance, CA 90501.
Date Revoked: April 12, 2007.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E7–7910 Filed 4–24–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409), and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License No.	Name/Address	Date Reissued
018938N	Carex Shipping, LLC 2235 E. Flamingo, Ste. 201G, Las Vegas, NV 89119	April 5, 2007.
001849F	Stiegler Shipping Company, Inc., 1151 Hillcrest Road, Suite F, Mobile, AL 36695	April 2, 2007.
004395F	Superior Link International, Inc., 380 S. Lemon Avenue, Suite G, Walnut, CA 91789	April 1, 2007.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E7–7917 Filed 4–24–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 10, 2007.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Frank W. Yuen, Esq, Nassau, Bahamas; to acquire additional voting shares of Concord Place, Inc., Nassau, Bahamas, and thereby indirectly acquire Los Angeles National Bank, Buena Park, California.

Board of Governors of the Federal Reserve System, April 20, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–7874 Filed 4–24–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E7-6705) published on pages 17908 and 17909 of the issue for Tuesday, April 10, 2007..

Under the Federal Reserve Bank of New York heading, the entry for Banco Bilbao Vizcaya Argentaria, S.A. (BBVA), Bilbao, Spain, and Circle Merger Corp., Birmingham, Alabama, is revised to read as follows:

A. Federal Reserve Bank of New York (Anne MacEwen, Bank Applications Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Banco Bilbao Vizcaya Argentaria, S.A. (BBVA), Bilbao, Spain; to acquire 100 percent of the voting shares of Compass Bancshares, Inc., Birmingham, Alabama, and thereby indirectly acquire voting shares of Compass Bank, Birmingham, Alabama, and Central Bank of the South, Anniston, Alabama.

In addition, Circle Merger Corp., Birmingham, Alabama, a wholly–owned subsidiary of Compass Bancshares, Inc., proposes to become a bank holding company by acquiring 100 percent of the voting shares of Compass Bancshares Inc., for a moment in time, to facilitate the acquisition of Compass Bancshares, Inc., by BBVA.

Furthermore, Blue Transaction Corporation, The Woodlands, Texas; a wholly–owned subsidiary of BBVA, proposes to become a bank holding company through the merger of Circle Merger Corp., with and into Blue Transaction Corporation.

Comments on this application must be received by May 4, 2007.

Board of Governors of the Federal Reserve System, April 19, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–7793 Filed 4–24–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 18, 2007.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Professional Capital, Inc., Dallas, Texas, and Professional Capital of Delaware, Inc., Wilmington, Delaware; to acquire up to 20 percent of the voting shares of Pioneer Bank, SSB, Dripping Springs, Texas (in organization).

Board of Governors of the Federal Reserve System, April 19, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–7794 Filed 4–24–07; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin PBS–2007–B2]

Federal Management Regulation; Redesignations of Federal Buildings

AGENCY: Public Buildings Service (P), GSA

ACTION: Notice of a bulletin.

SUMMARY: The attached bulletin announces the redesignation of a Federal Building.

EXPIRATION DATE: This bulletin expires September 20, 2007. However, the building redesignation announced by this bulletin will remain in effect until canceled or superseded.

FOR FURTHER INFORMATION CONTACT: General Services Administration, Public Buildings Service (P), Attn: Anthony E. Costa, 1800 F Street, NW., Washington, DC 20405, e-mail at *anthony.costa@gsa.gov,* (202) 501–1100.

Dated: April 5, 2007.

Lurita Doan,

Administrator of General Services.

U.S. GENERAL SERVICES ADMINISTRATION

FMR BULLETIN PBS–2007–B2

REDESIGNATIONS OF FEDERAL BUILDINGS

TO: Heads of Federal Agencies

SUBJECT: Redesignations of Federal Buildings

1. What is the purpose of this bulletin? This bulletin announces the redesignation of a Federal Building.

2. *When does this bulletin expire?* This bulletin expires September 20, 2007. However, the building redesignation announced by this bulletin will remain in effect until canceled or superseded.

3. *Redesignation.* The former and new names of the redesignated building are as follows:

Former Name	New Name
John Milton Bryan Simpson, United States Courthouse, 300 North Hogan Street, Jacksonville, FL 32202.	Bryan Simpson, United States Courthouse, 300 North Hogan Street, Jacksonville, FL 32202.

4. *Who should we contact for further information regarding redesignation of this Federal Building?* U.S. General Services Administration, Public Buildings Service (P),Attn: Anthony E. Costa, 1800 F Street, NW, Washington, DC 20405, telephone number: (202) 501–1100, e-mail at *anthony.costa@gsa.gov.*

Dated: April 5, 2007.

Lurita Doan,

Administrator of General Services.

[FR Doc. E7–7827 Filed 4–24–07; 8:45 am]

BILLING CODE 6820–23–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 12⅜% for the quarter ended March 31, 2007. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: April 18, 2007.

Jean Augustine,

Director, Office of Financial Policy and Reporting.

[FR Doc. 07–2048 Filed 4–24–07; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–104]

Notice of Public Meeting; ''Safety and Health in the Horse Racing Industry and Best Practices''

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

Meeting Date and Time: May 22, 2007, 9 a.m.–5 p.m. EDT.

Place: Hyatt Regency Crystal City at Reagan National Airport, 2799 Jefferson Davis Highway, Arlington, VA 22202, telephone (703) 418–1234.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) announces the opportunity for the public to provide input regarding issues related to safety and health in the horse racing industry and best practices. These comments may help to shape proposed future activities by NIOSH. The public meeting will be held on May 22, 2007 at the Hyatt Regency Crystal City at Reagan National Airport, 2799 Jefferson Davis Highway, Arlington, VA 22202.

An opportunity to make oral presentations will be provided to interested parties given available time on the agenda. Requests to make such presentations at the meeting should be made by e-mail to *khendricks@cdc.gov.* All requests to present should include the name, address, telephone number, relevant business affiliations of the presenter, and a brief summary of the presentation. All requests for oral presentation must be received by May 7, 2007. All comments should be submitted to the NIOSH Docket Office.

Status: Open to the public, limited by space available. The meeting room accommodates approximately 40 people.

Address: Written comments on issues related to safety and health in the horse racing industry should be mailed to: NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513–533–8303, Fax 513–533–8285. Comments may also be submitted by e-mail to *niocindocket@cdc.gov.* E-mail attachments should be formatted in Microsoft Word. All comments should be submitted to NIOSH no later than June 22, 2007 and must reference the Docket Number (NIOSH 104) in the subject heading.

Contact Person for Additional Information: Kitty Hendricks, Research Epidemiologist, Surveillance and Field Investigations Branch, Division of Safety Research, Telephone 304–285–6252.

Dated: April 18, 2007.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–7855 Filed 4–24–07; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Public Meeting

AGENCY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

Meeting Date and Time: May 3, 2007, 1:30 p.m.–5 p.m. EDT.

Place: Pittsburgh Airport Marriott, 777 Aten Road, Coraopolis, PA 15108, telephone (412) 788–8800, fax (412) 788–6299.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following public meeting and request for information:

NIOSH Availability of Opportunity to Provide Input regarding the National Occupational Research Agenda (NORA) for the Mining Sector.

Status: Meeting is open to the public, limited only by the space available. Participation is encouraged through the Web for those who cannot attend in person.

Background: A large part of our lives is shaped by the work we do. NORA is a framework to guide occupational safety and health research for the nation. It is an ongoing endeavor to focus research to reduce work-related injury and illness. As the program entered its second decade, it was structured according to eight industry sector groups in order to encourage widespread adoption of effective practices developed through research. Each sector will have a NORA Sector Council consisting of NIOSH and stakeholder representatives. The initial task of the NORA Mining Council will be to draft a strategic plan for the nation addressing high priority needs in the sector. Following revisions based on

public comment, the ongoing task of the Council will then be to encourage implementation of the plan by research and industry organizations in order to reduce occupational illnesses, injuries and fatalities in the sector.

Given that NORA represents a broad-based partnership involving government, business, the worker community, academia, and others, public input is essential for planning future directions for the initiative. Some of the considerations for the Mining Sector are that NIOSH as the federal organization charged with conducting occupational safety and health research has established strategic goals in mining research. They are available for viewing: *http://www.cdc.gov/niosh/programs/mining/goals.html.* Since development of these goals, the NIOSH research program has been enhanced according to the requirements of the MINER Act of 2006: *http://www.cdc.gov/niosh/mining/mineract/mineract.htm.* Unlike other sectors, NIOSH can request advice from an Advisory Committee for mining: Mine Safety and Health Research Advisory Committee (MSHRAC). Besides these ongoing NIOSH activities, NORA provides the opportunity for NIOSH to work with partners and for partners to work with each other to effectively conduct additional research in mining safety and health and to move those research results into more effective workplace practice.

The first meeting of the NORA Mining Sector Council will be held May 3, 2007, 1:30 p.m.–5 p.m. From 2:30 p.m.–4 p.m., the meeting will be structured to hear stakeholder comments on important occupational safety and health issues in the industry, especially those not adequately covered by NIOSH or other ongoing research; organizations that should participate in the research or in NORA activities; individuals who are willing to participate in NORA Mining Sector Council activities; and efficient ways to accomplish the NORA activities in light of ongoing organizational activities in the sector. Participants wishing to provide comments may do so via E-mail or may request an opportunity to make a five minute presentation. All participants are requested to register for the free meeting by sending an E-mail to *MWerner@cdc.gov* with their name, affiliation, whether they wish to attend in person or through the Web, whether they are requesting time to speak briefly, and, if so, the general topic(s) on which they wish to speak. Participants wishing to speak are encouraged to register early. The public meetings are open to everyone, including all workers, professional societies, organized labor, employers, researchers, health professionals, government officials and elected officials. Broad participation is desired.

Summary: The NORA Mining Sector Council will accept public comments on the range of occupational safety and health issues that should be considered and the individuals and organizations who should be involved for the purpose of enhancing the effectiveness of the Council.

Types of occupational safety and health issues might include diseases, injuries, exposures, populations at risk, and needs of occupational safety and health systems. For example, occupational musculoskeletal disorders in workers at small operations might be seen as important for a segment of the mining sector. If possible, please include as much information as necessary for understanding the safety or health research priority you identify. Such information could include characterization of the frequency and severity with which the injury, illness, or hazardous exposure is occurring and of the factors you believe might be causing the health or safety issue. Input is also requested on the types of research that you believe might make a difference and the partners (*e.g.*, specific industry associations, labor organizations, research organizations, governmental agencies) who should be involved in forming research efforts and in solving the problem.

All presentation text and other comments provided by e-mail will be entered into the searchable database of NORA comments, which will be publicly available and will be consulted by the NORA Mining Sector Council when drafting the strategic plan for the nation. The current version of the searchable database of NORA comments is available at: *http://www2a.cdc.gov/niosh-comments/nora-comments/commentsrch.asp.*

For Technical Information Contact: Dr. Michael A. Werner, Senior Scientist—Mining, NIOSH, telephone 509–354–8014, Co-Chair, NORA Mining Sector Council.

ADDRESSES: Comments and meeting registrations may also be e-mailed to *MWerner@cdc.gov*, or sent via postal mail to: Dr. Michael A. Werner, Spokane Research Lab, NIOSH, 315 E Montgomery Avenue, Spokane, Washington 99207.

Dated: April 18, 2007.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–7849 Filed 4–24–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers of Disease Control and Prevention

[Docket Number NIOSH–099]

Notice of Public Meeting and Availability for Public Comment

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting and request for public comment on the following draft document: ''Asbestos and Other Mineral Fibers: A Roadmap for Scientific Research.'' The document can be found at *http://www.cdc.gov/niosh/review/public/099/.* Instructions are provided for submitting comments.

Public Comment Period: February 28 through May 31, 2007.

Public Meeting Date and Time: May 4, 2007, 9 a.m.–4 p.m.

Place: Holiday Inn Capitol, 550 C Street SW., Washington, DC 20024.

Purpose of Meeting: To discuss and obtain comments on the draft document, ''Asbestos and Other Mineral Fibers: A Roadmap for Scientific Research''. Special emphasis will be placed on discussion of the following:

(1) Whether the hazard identification and discussion of health effects for asbestos and mineral fibers are a reasonable reflection of the current understanding of the evidence in the scientific literature,

(2) The appropriateness and relevancy of the discussion of the current understanding of the analytical issues and the research needs for analysis of asbestos and mineral fibers,

(3) The appropriateness and relevancy of the discussion of the current understanding of the epidemiological issues and the research needs for understanding the health effects of asbestos and mineral fibers,

(4) The appropriateness and relevancy of the discussion of the current understanding of the toxicological issues and the research needs for

understanding the health effects of asbestos and mineral fibers, and

(5) The appropriateness and relevancy of the discussion of the path forward and whether the ultimate vision is a reasonable outcome for the proposed research strategy for asbestos and mineral fibers.

Status: The forum will include scientists and representatives from various government agencies, industry, labor, and other stakeholders, and is open to the public, limited only by the space available. Persons wanting to attend and provide oral comments at the meeting are requested to notify Diane Miller no later than May 1, 2007 to reserve time for their comments. Those interested in attending without providing oral comments at the meeting also are requested to notify Ms. Miller by May 1, 2007 to reserve a seat. Ms. Miller can be reached by telephone at 513/533–8450 or by e-mail at *niocindocket@cdc.gov.* Priority for attendance will be given to those providing oral comments. Other requests to attend the meeting will then be accommodated on a first-come basis. Unreserved walk-in attendees will be accommodated on the day of the meeting if space is available.

Persons wanting to provide oral comments will be permitted up to 15 minutes. If additional time becomes available, presenters will be notified. Oral comments given at the meeting will be recorded and included in the docket. Written comments will also be accepted at the meeting. Written comments may also be submitted to Diane Miller, Robert A. Taft Laboratories, 4676 Columbia Parkway, MS C–34, Cincinnati, Ohio 45226, telephone 513/533–8450. All material submitted to the Agency should reference docket number NIOSH–099 and must be submitted by May 31, 2007 (public review closing date) to be considered by the Agency. All electronic comments should be formatted as Microsoft Word. Please make reference to docket number NIOSH–099.

NIOSH seeks to obtain materials, including published and unpublished reports and research findings, relevant to the characterization of exposures and possible health risks of occupational exposure to asbestos and other mineral fibers. Examples of requested information include, but are not limited to, the following:

(1) Identification of industries, occupations, and processes where exposure to mineral fibers may occur, including exposure to fiber-like cleavage fragments and thoracic-sized fibers (as defined in the draft NIOSH document).

(2) Current and historical mineral fibers exposure measurement data, including exposure to fiber-like cleavage fragments and thoracic-sized fibers at various types of industries and jobs.

(3) Case reports or other health information demonstrating health effects in workers exposed to mineral fibers, including exposure to fiber-like cleavage fragments and thoracic-sized fibers.

(4) Reports of experimental *in vivo, in vitro,* and inhalation studies with rodents that provide evidence of biopersistence and/or of a dose-relationship between the particle dimension (*e.g.*, fiber) of the mineral and its biological activity.

(5) Information on sampling and analytical methods that could be used to improve the identification and differentiation of ''fibers'' of different dimensions and composition.

(6) Information on technologies that could be used to separate thoracic-sized fibers, including fiber-like cleavage fragments, into discrete size dimensions in quantities sufficient for conducting chronic rodent inhalation studies.

NIOSH will use this information to assess the scientific basis for the draft document and the need to revise research recommendations.

Contact Person for Technical Information: Paul Middendorf, telephone (513) 533–8606, M/S C–9, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Contact Person for Submitting Comments/Meeting Attendance: Diane Miller, Robert A. Taft Laboratories, 4676 Columbia Parkway, M/S C–34, Cincinnati, Ohio 45226, telephone (513) 533–8450. All material submitted to the Agency should reference Docket Number NIOSH–099.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Dated: April 18, 2007.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–7882 Filed 4–24–07; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0014]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Submission of Petitions: Food Additive, Color Additive (Including Labeling), and Generally Recognized as Safe Affirmation; Electronic Submission Using Food and Drug Administration Forms 3503 and 3504

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 25, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974. All comments should be identified with the OMB control number 0910–0016. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Submission of Petitions: Food Additive, Color Additive (Including Labeling), and Generally Recognized as Safe Affirmation; Electronic Submission Using Food and Drug Administration Forms 3503 and 3504 (OMB Control Number 0910–0016)—Extension

Section 409(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(a)) provides that a food additive shall be deemed to be unsafe, unless: (1) The additive and its use, or intended use, are in conformity with a regulation issued under section 409 of

the act that describes the condition(s) under which the additive may be safely used; (2) the additive and its use, or intended use, conform to the terms of an exemption for investigational use; or (3) a food contact notification submitted under section 409(h) of the act is effective. Food additive petitions (FAPs) are submitted by individuals or companies to obtain approval of a new food additive or to amend the conditions of use permitted under an existing food additive regulation. Section 171.1 (21 CFR 171.1) specifies the information that a petitioner must submit in order to establish that the proposed use of a food additive is safe and to secure the publication of a food additive regulation describing the conditions under which the additive may be safely used. Parts 172, 173, 179, and 180 (21 CFR parts 172, 173, 179, and 180) contain labeling requirements for certain food additives to ensure their safe use.

Section 721(a) of the act (21 U.S.C. 379e(a)) provides that a color additive shall be deemed to be unsafe unless the additive and its use are in conformity with a regulation that describes the condition(s) under which the additive may safely be used, or the additive and its use conform to the terms of an exemption for investigational use issued under section 721(f) of the act. Color additive petitions (CAPs) are submitted by individuals or companies to obtain approval of a new color additive or a change in the conditions of use permitted for a color additive that is already approved. Section 71.1 (21 CFR 71.1) specifies the information that a petitioner must submit to establish the safety of a color additive and to secure the issuance of a regulation permitting its use. FDA's color additive labeling requirements in § 70.25 (21 CFR 70.25) require that color additives that are to be used in food, drugs, devices, or cosmetics be labeled with sufficient information to ensure their safe use.

Under section 201(s) of the act (21 U.S.C. 321(s)), a substance is generally recognized as safe (GRAS) if it is generally recognized among experts qualified by scientific training and experience to evaluate its safety, to be safe through either scientific procedures or common use in food.

The act historically has been interpreted to permit food manufacturers to make their own initial determination that use of a substance in food is GRAS and thereafter seek affirmation of GRAS status from FDA. FDA reviews petitions for affirmation of GRAS status that are submitted on a voluntary basis by the food industry and other interested parties under authority of sections 201, 402, 409, and 701 of the act (21 U.S.C. 342, 348, and 371). To implement the GRAS provisions of the act, FDA has set forth procedures for the GRAS affirmation petition process in § 170.35(c)(1) (21 CFR 170.35(c)(1)). While the GRAS affirmation petition process still exists, FDA has not received a GRAS affirmation petition since the establishment of the voluntary GRAS notification program.

In the **Federal Register** of July 31, 2001 (66 FR 39517), FDA announced the availability of a draft guidance entitled ''Draft Guidance for Industry on Providing Regulatory Submissions to Office of Food Additive Safety in Electronic Format for Food Additive and Color Additive Petitions.'' This guidance describes the procedures for electronic submission of FAPs and CAPs using FDA Form 3503 and FDA Form 3504, respectively.

FDA scientific personnel review food and color additive and GRAS affirmation petitions to ensure the safety of the intended use of the substance in or on food, or of a food additive that may be present in food as a result of its use in articles that contact food (or for color additives, its use in food, drugs, cosmetics, or medical devices).

Description of respondents: Respondents are businesses engaged in the manufacture or sale of food, food ingredients, color additives, or substances used in materials that come into contact with food.

In the **Federal Register** of January 19, 2007 (72 FR 2533), FDA published a 60-day notice requesting public comment on the information collection provisions. FDA received one comment that was outside the scope of the request for comments.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/FDA Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Operating & Maintenance Costs	Total Hours
CAPs						
70.25, 71.1	3	1	3	1,337	$8,200	4,010
FDA Form 3504	1	1	1	1	0	1
GRAS Affirmation Petitions						
170.35	1 or fewer	1	1 or fewer	2,614	0	2,614
FAPs						
171.1	6	1	6	7,093	0	42,560
FDA Form 3503	1	1	1	1	0	1
Total					$8,200	49,186

[1]There are no capital costs associated with this collection of information.

The estimate of burden for food additive, color additive, or GRAS affirmation petitions is based on FDA's experience and the average number of new petitions received in calendar years 2003, 2004, and 2005, and the total hours expended in preparing the petitions. In compiling these estimates, FDA consulted its records of the number of petitions received in the past 3 years. The figures for hours per response are based on estimates from experienced persons in the agency and in industry. Although the estimated hour burden varies with the type of petition submitted, an average petition involves analytical work and appropriate toxicological studies, as well as the

work of drafting the petition itself. The burden varies depending on the complexity of the petition, including the amount and types of data needed for scientific analysis.

Color additives are subjected to payment of fees for the petitioning process. The listing fee for a color additive petition ranges from $1,600 to $3,000, depending on the intended use of the color and the scope of the requested amendment. A complete schedule of fees is set forth in 21 CFR 70.19. An average of two category A and one category B color additive petitions are expected per year. The maximum color additive petition fee for a category A petition is $2,600 and the maximum color additive petition fee for a category B petition is $3,000. Since an average of 3 color additive petitions are expected per calendar year, the estimated total annual cost burden to petitioners for this start-up cost would be less than or equal to $8,200 ((2 x $2,600) + (1 x $3,000) = $8,200)). There are no capital costs associated with color additive petitions.

The estimated burden reported in table 1 of this document does not include the previously estimated burden for the preparation of FAPs submitted to amend parts 175 through 178 (21 CFR parts 175 through 178). The burden to respondents is similar between the preparation of petitions submitted to amend parts 175 through 178 and the preparation of a food contact substance notification. In this request for extension of OMB approval for the collection of information for FAPs, FDA proposes to transfer the collection of information and burden associated with petitions submitted to amend the indirect food additive regulations (parts 175 through 178) from this collection of information (OMB control number 0910–0016) to the existing collection of information for the Food Contact Substances Notification System (OMB control number 0910–0495).

FDA estimates the annual reporting burden associated with petitions submitted to amend parts 175 through 178 to be transferred from OMB control number 0910–0016 to OMB control number 0910–0495. An average of two indirect food additive petitions are expected per calendar year. The estimated total annual hour burden to petitioners per petition is 10,995 hours, for a total burden of 21,990 hours. There are no capital costs or operating and maintenance costs associated with the burden hours being transferred from OMB control number 0910–0016 to OMB control number 0910–0495.

Electronic submissions of petitions contain the same petition information required for paper submissions. The agency estimates that one petitioner for both food and color additives will take advantage of the electronic submission process per year. By using the guidelines and forms that FDA is providing, the petitioner will be able to organize the petition to focus on the information needed for FDA's safety review. Therefore, we estimate that petitioners will only need to spend approximately 1 hour completing the electronic submission application form (Form 3503 or 3504, as appropriate) because they will have already used the guidelines to organize the petition information needed for the submission.

The labeling requirements for food and color additives were designed to specify the minimum information needed for labeling in order that food and color manufacturers may comply with all applicable provisions of the act and other specific labeling acts administered by FDA. Label information does not require any additional information gathering beyond what is already required to assure conformance with all specifications and limitations in any given food or color additive regulation. Label information does not have any specific recordkeeping requirements unique to preparing the label. Therefore, because under § 70.25, labeling requirements for a particular color additive involve information required as part of the CAP safety review process, the estimate for number of respondents is the same for §§ 70.25 and 71.1, and the burden hours for labeling are included in the estimate for § 71.1. Also, because labeling requirements under parts 172, 173, 179, and 180 for particular food additives involve information required as part of the FAP safety review process under § 171.1, the burden hours for labeling are included in the estimate for § 171.1.

In cases where a regulation implements a statutory information collection requirement, only the additional burden attributable to the regulation, if any, has been included in FDA's burden estimate.

Dated: April 18, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–7813 Filed 4–24–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0475]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Human Tissue Intended for Transplantation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 25, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974. All comments should be identified with the OMB control number 0910–0302. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Human Tissue Intended for Transplantation (OMB Control Number 0910–0302)—Extension

Under section 361 of the Public Health Service (PHS) Act (42 U.S.C. 264), FDA issued regulations to prevent the transmission of human immunodeficiency virus (HIV), hepatitis B, and hepatitis C, through the use of human tissue for transplantation. The regulations provide for inspection by FDA of persons and tissue establishments engaged in the recovery, screening, testing, processing, storage, or distribution of human tissue. These facilities are required to meet provisions intended to ensure appropriate screening and testing of human tissue donors and to ensure that records are

kept documenting that the appropriate screening and testing have been completed.

Sections 1270.31(a) through (d) (21 CFR 1270.31(a) through (d)) require written procedures to be prepared and followed for the following steps: (1) All significant steps in the infectious disease testing process; (2) all significant steps in obtaining, reviewing, and assessing the relevant medical records of the donor; (3) designating and identifying quarantined tissue; and (4) for prevention of infectious disease contamination or cross-contamination by tissue during processing. Sections 1270.31(a) and (b) also require recording and justification of any deviation from the written procedures. Section 1270.33(a) (21 CFR 1270.33(a)) requires records to be maintained concurrently with the performance of each significant step in the procedures of infectious disease screening and testing of human tissue donors. Section 1270.33(f) requires records to be retained regarding the determination of the suitability of the donors and such records required under § 1270.21 (21 CFR 1270.21). Section 1270.33(h) requires all records be retained at least 10 years beyond the date of transplantation, distribution, disposition, or expiration of the tissue, whichever is the latest. Section 1270.35 (21 CFR 1270.35) requires specific records be maintained to document the following: (1) The results and interpretation of all required infectious disease tests, (2) information on the identity and relevant medical records of the donor, (3) the receipt and/or distribution of human tissue, and (4) the destruction or other disposition of human tissue.

Respondents to this collection of information are manufacturers of human tissue intended for transplantation. Based on information from the Center for Biologics Evaluation and Research's (CBER's) database system, FDA estimates that there are approximately 190 tissue establishments, of which 105 are conventional tissue banks and 85 are eye tissue banks. Based on information provided by industry, there are an estimated total of 1,500,000 conventional tissue products and 84,789 eye tissue products recovered per year with an average of 25 percent of the tissue discarded due to unsuitability for transplant. In addition, there are an estimated 23,295 donors of conventional tissue and 42,649 donors of eye tissue each year.

Accredited members of the American Association of Tissue Banks (AATB) and Eye Bank Association of America (EBAA) adhere to standards of those organizations that are comparable to the recordkeeping requirement in 21 CFR part 1270. Based on information provided by CBER's database system, 76 percent of the conventional tissue banks are members of AATB (105 x 76 percent = 80), and 96 percent of eye tissue banks are members of EBAA (85 x 96 percent = 82). Therefore, recordkeeping by these 162 establishments (80 + 82 = 162) is excluded from the burden estimates as usual and customary business activities (5 CFR 1320.3(b)(2)). The recordkeeping burden, thus, is estimated for the remaining 28 establishments, which is 15 percent of all establishments (190 - 162 = 28, or 28/190 = 15 percent).

Based on CBER's database system and information provided by industry, FDA estimates an average of two new tissue banks annually, which may be non-members of a trade association. Each new tissue bank requires an estimated 64 hours to prepare standard operating procedures (SOPs) under § 1270.31(a) through (d). The requirement for the development of these written procedures is considered an initial one-time burden. FDA assumes that all current tissue establishments have developed written procedures in compliance with part 1270. Therefore, their information collection burden is for the general review and update of written procedures estimated to take an annual average of 24 hours, and for the recording and justifying of any deviations from the written procedures for § 1270.31(a) and (b), estimated to take an annual average of 1 hour. The information collection burden for maintaining records concurrently with the performance of each significant screening and testing step and for retaining records for 10 years under § 1270.33(a), (f), and (h), include documenting the results and interpretation of all required infectious disease tests and results and the identity and relevant medical records of the donor required under § 1270.35(a) and (b). Therefore, the burden under these provisions is calculated together in table 1 of this document. The recordkeeping estimates for the number of total annual records and hours per record are based on information provided by industry and FDA experience.

In the **Federal Register** of December 4, 2006 (71 FR 70410), FDA published a 60-day notice on human tissue intended for transplantation requesting public comment on the information collection provisions. No comments were received. The notice contained an error in the third line of the table for estimated annual recordkeeping burden. The following table corrects that error.

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Record-keepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
1270.31(a), (b), (c), and (d)	28	1	2	64	128
1270.31(a), (b), (c), and (d)[2]	28	1	28	24	672
1270.31(a) and 1270.31(b)[3]	28	2	56	1	56
1270.33(a), (f), and (h), and 1270.35(a) and (b)	28	8,843	247,610	1	247,610
1270.35(c)	28	16,980	475,436	1	475,436
1270.35(d)	28	2,123	59,430	1	59,430
Total					783,332

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]Review and update of SOPs.
[3]Documentation of deviations from SOPs.

Dated: April 18, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–7815 Filed 4–24–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5121–N–13]

Notice of Proposed Information Collection: Comment Request; Multifamily Project Monthly Accounting Reports

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 25, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410 or *Lillian_L_Deitzer@HUD.gov*.

FOR FURTHER INFORMATION CONTACT: Kimberly Munson, Office of Asset Management, Policy and Participation Standards Division, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–1320 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Multifamily Project Monthly Accounting Reports.

OMB Control Number, if applicable: 2502–0108.

Description of the need for the information and proposed use: This information is necessary for HUD to monitor compliance with contractual agreements and to analyze cash flow trends as well as occupancy and rent collection levels.

Agency form numbers, if applicable: HUD–93479, HUD–93480, HUD–93481.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 14.758; the estimated number of responses is 2,952; the frequency of responses is 12; estimated time to gather and prepare the necessary documents (combined for all documents) is 3.50 hours per submission, and the estimated total annual burden hours are 123,984.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 20, 2007.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E7–7922 Filed 4–24–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Endangered Species Act Enhancement of Survival Permits Developed in Accordance With a Template Safe Harbor Agreement for the Columbia Basin Pygmy Rabbit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the receipt of thirteen applications for enhancement of survival permits that would be issued pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The applications were developed in conjunction with a Template Safe Harbor Agreement (Template SHA) for the Columbia Basin pygmy rabbit (*Brachylagus idahoensis*). *The thirteen permit applicants are:* (1) Mr. Raymond Mayer; (2) Rimrock Meadows Association; (3) ABS Farms LLC; (4) Sagebrush Flats Farm; (5) Mr. Eric Long; (6) Mr. W. Paul Malone; (7) Tom Davis Farms J.V.; (8) Mr. Dale Pixlee; (9) Clements Farm, Inc.—JBS Farms; (10) Heer Brothers J.V.; (11) Mr. Don Roberts; (12) David Adams Family LLC; and (13) Evans Brothers J.V. Issuance of permits to these applicants would exempt incidental take of the Columbia Basin pygmy rabbit, which would otherwise be prohibited by section 9 of the Act, that is above the baseline conditions of properties enrolled under the Template SHA, and that may result from the permittees' otherwise lawful land-use activities. The Service requests comments from the public regarding the proposed issuance of permits to these thirteen applicants. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

DATES: To be fully considered, written comments from interested parties must be received on or before May 25, 2007.

ADDRESSES: Written comments concerning this notice should be addressed to Susan Martin, Supervisor, U.S. Fish and Wildlife Service, Upper Columbia Fish and Wildlife Office, 11103 East Montgomery Drive, Spokane, Washington 99206. You may also send comments by facsimile, at (509) 891–6748, or by electronic mail, at: *fw1cbprabbit@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Chris Warren at (509) 893–8020, or Michelle Eames at (509) 893–8010.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Copies of the thirteen permit applications, the final Template SHA, and other relevant documents are available for public inspection, by appointment, during normal business hours at the Upper Columbia Fish and Wildlife Office (see **ADDRESSES**), or they

may be viewed on the internet at the following address: *http:// www.fws.gov/easternwashington/.* You may also request copies of the documents by contacting the Service's Upper Columbia Fish and Wildlife Office [see **FOR FURTHER INFORMATION CONTACT**]. The Service is furnishing this notice to provide the public, other State and Federal agencies, and interested Tribes an opportunity to review and comment on these applications. All comments received will become part of the public record. If you wish us to withhold your name and/or address to the extent allowable under law, you must state this prominently at the beginning of your comments. All comments received from organizations, businesses, or individuals representing organizations or businesses are available for public inspection in their entirety.

Background

On September 7, 2006, the Service announced the availability for public review and comment of a draft Template SHA for the Columbia Basin pygmy rabbit, which was jointly developed by the Service and the Washington Department of Fish and Wildlife (WDFW), and a draft Environmental Assessment, which was developed by the Service pursuant to Federal responsibilities under the National Environmental Policy Act. The Service's September 7, 2006, notice also announced the receipt of three Permit applications that were developed in accordance with the Template SHA (71 FR 52816). The final Template SHA, which contained only minor modifications from the draft released for public review, was signed by the Service and WDFW on October 24, 2006.

The primary objective of the Template SHA is to facilitate collaboration between the Service, WDFW, and prospective participants to voluntarily implement conservation measures to benefit the Columbia Basin pygmy rabbit. Another objective of the Template SHA is to facilitate the processing of enhancement of survival permit applications that would provide incidental take coverage for participants to relieve them of additional section 9 liability under the Act if implementation of their conservation measures results in increased numbers or distribution of Columbia Basin pygmy rabbits on their enrolled properties.

This notice is provided pursuant to section 10(c) of the Act. The Service has previously determined that implementation of the Template SHA will result in conservation benefits to the Columbia Basin pygmy rabbit and will not result in significant effects to the human environment. The Service will evaluate the thirteen permit applications noticed herein, related documents, and any comments submitted thereon to determine whether they are consistent with the measures prescribed by the Template SHA and comply with relevant statutory and regulatory requirements. If it is determined that the requirements are met, permits to exempt incidental take of the Columbia Basin pygmy rabbit will be issued to the applicants. The final permit determinations will not be completed until after the end of the 30-day comment period, and will fully consider all comments received.

Dated: April 19, 2007.

David J. Wesley,

Deputy Regional Director, Region 1, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. E7–7899 Filed 4–24–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Construction of a Commercial Development in Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice: receipt of application for an incidental take permit; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an Incidental Take Permit (ITP) Application and Habitat Conservation Plan (HCP) from the following applicant: Pineda Development Corporation (applicant) requests one ITP for a duration of 5 years under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The applicant anticipates taking approximately 0.54 acre (ac) of Florida scrub-jay (*Alphelocoma coerulescens*)—occupied habitat incidental to constructing a commercial development in Brevard County, Florida (Project). The applicant's HCP describes the mitigation and minimization measures the applicant proposes to address the effects of the Project to the scrub-jay.

DATES: We must receive any written comments on the ITP application and HCP on or before May 25, 2007.

ADDRESSES: If you wish to review the application and HCP, you may write the Field Supervisor at our Jacksonville Field Office, 6620 Southpoint Drive South, Suite 310, Jacksonville, FL, 32216, or make an appointment to visit during normal business hours. If you wish to comment, you may mail or hand deliver comments to the Jacksonville Field Office, or you may e-mail comments to *paula_sisson@fws.gov.* For more information on reviewing documents and public comments and submitting comments, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Paula Sisson, Fish and Wildlife Biologist, Jacksonville Field Office (see **ADDRESSES**); telephone: 904/232–2580, ext. 126.

SUPPLEMENTARY INFORMATION:

Public Review and Comment

Please reference permit number TE143105–0 for Pineda Development in all requests or comments. Please include your name and return address in your e-mail message. If you do not receive a confirmation from us that we have received your e-mail message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Background

The Florida scrub-jay (scrub-jay) is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation, which have adversely affected the distribution and numbers of scrub-jays.

The total estimated population is between 7,000 and 11,000 individuals. The decline in the number and distribution of scrub-jays in east-central Florida has been exacerbated by tremendous urban growth in the past 50

years. Much of the historic commercial and residential development has occurred on the dry soils which previously supported scrub-jay habitat. Much of this area of Florida was settled early because few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded due to the exclusion of fire, which is needed to maintain xeric uplands in conditions suitable for scrub-jays.

Applicant's Proposal

The applicant is requesting take of approximately 0.54 ac of occupied scrub-jay habitat incidental to the construction of a commercial development (Palm Shore Retail). Palm Shore Retail is located within Section 19, Township 26 South, Range 37 East. The parcel is north of Pineda Causeway and west of the FEC Railroad, Palm Shores, Brevard County, Florida.

Development of the Project, including infrastructure, parking areas and landscaping, preclude retention of scrub-jay habitat onsite. Therefore, the applicant proposes to mitigate for the loss of 0.54 ac of occupied scrub-jay habitat by donating $9,072 to the Florida Scrub-jay Fund administered by The Nature Conservancy. Funds in this account are ear-marked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management.

We have determined that the applicant's proposal, including the proposed mitigation and minimization measures, would have minor or negligible effects on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and qualifies for categorical exclusions under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. A low-effect HCP is one involving (1) minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

We will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets those requirements, we will issue the ITP for incidental take of the Florida scrub-jay. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in the final analysis to determine whether or not to issue the ITP.

Authority: We provide this notice under Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

Dated: April 17, 2007.

David L. Hankla,

Field Supervisor, Jacksonville Field Office

[FR Doc. E7–7872 Filed 4–24–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14868–B; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to K'oyitł'ots'ina, Limited, Successor in Interest to Bi*n* Goo*g*a, Inc. The lands are in the vicinity of Huslia, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 6 N., R. 13 E.,
Secs. 31 and 32.
Containing 992.19 acres.

The subsurface estate in these lands will be conveyed to Doyon, Limited when the surface estate is conveyed to K'oyitł'ots'ina, Limited, Successor in Interest to Bi*n* Goo*g*a, Inc. Notice of the decision will also be published four times in the Fairbanks Daily News Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until May 25, 2007 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

D. Kay Erben,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E7–7880 Filed 4–24–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6984–D; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Klawock Heenya Corporation. The lands are in the vicinity of Klawock, Alaska, and are located in:

Copper River Meridian, Alaska

T. 73 S., R. 80 E.,
Sec. 1.
Containing 9.70 acres.

The subsurface estate in these lands will be conveyed to Sealaska Corporation when the surface estate is conveyed to Klawock Heenya Corporation. Notice of the decision will also be published four times in the Island News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until May 25, 2007 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

D. Kay Erben,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E7–7883 Filed 4–24–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–921–06–1320–EL; COC 68590]

Notice of Federal Competitive Coal Lease Sale Reoffer, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale, lease application COC 68590.

SUMMARY: Notice is hereby given that the United States Department of the Interior, Bureau of Land Management (BLM), Colorado State Office, will reoffer certain coal resources describe below as Federal coal lease by application (LBA) COC 68590 in Moffat County, Colorado, for competitive sale by sealed bid, in accordance with the provisions for competitive lease sales in 43 CFR 3422.2(a), and the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 11 a.m., Wednesday, May 30, 2007. Sealed bid must be sent by certified mail, return receipt requested, or be hand delivered to the address indicated below, and must be received on or before 10 a.m., Wednesday, May 30, 2007. The BLM cashier will issue a receipt for each hand delivered sealed bid. Any bid received after the time specified will not be considered and will be returned. The outside of the sealed envelope containing the bid must clearly state that the envelope contains a bid for Coal Lease Sale COC 68590, and is not to be opened before the date and hour of the sale.

ADDRESSES: The lease sale will be held in the BLM Colorado State Office, Conference Room, Fourth Floor, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted, hand delivered or mailed to BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Kurt Barton at BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215 or telephone 303–239–3714.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a LBA filed by Colowyo Coal Company, March 8, 2005. The tract was previously offered on December 19, 2006, and the one bid received at that sale was rejected because it did not meet the BLM's estimate of fair market value (FMV). The coal resource to be offered consists of recoverable coal reserves in the X through G seams mined by surface mining methods in the following lands:

T. 3 N., R. 94 W., 6th P.M.
Sec. 1, lots 7, 8, SW¼NW¼, N½SE¼NW¼, SW¼SE¼NW¼, N½NW¼SW¼, and SW¼NW¼SW¼;
Sec. 2, lots 5 through 8, S½N½, SW¼, N½SE¼, SW¼SE¼, N½SE¼SE¼, and SW¼SE¼SE¼;
Sec. 3, lot 5, E½W½NE¼, SE¼NE¼, and E½SE¼;
Sec. 10, NE¼NE¼;
Sec. 11, NW¼NE¼NE¼, N½NW¼NE¼, SW¼NW¼NE¼, NW¼SW¼NE¼; N½NW¼, NE¼SW¼NW¼, and N½SE¼NW¼.
T. 4 N., R. 94 W., 6th P.M.
Sec. 34, S½NE¼NE¼, SE¼NE¼, E½W½SE¼, and E½SE¼.

Containing approximately 1,406.71 acres in Moffat County, Colorado.

Total recoverable reserves are estimated to be 92 million tons. The surface minable coal is ranked as sub bituminous B coal. The estimated coal quality on an as-received basis for the seams are as follows:

X THROUGH G SEAMS

BTU	10,549 BTU/lb. (percent)
Volatile Matter	33.52
Moisture	15.90
Fixed Carbon	44.92
Sulfur Content	0.48
Ash Content	5.66

The tract will be leased to the qualified bidder who submits the highest bid amount, provided that the high bid meets the FMV for the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent FMV. The FMV of the tract will be determined by the Authorized Officer after the sale. In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received. The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre, or fraction thereof, and of a royalty payment to the United States of 12.5 percent of the value of coal produced by strip or auger mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

The required Detailed Statement for the offered tract, including bidding instructions and sales procedures under 43 CFR 3422.3–2, and the terms and conditions of the proposed coal lease, is available from BLM Colorado State Office at the addresses above. Case file documents and written comments for COC 68590 submitted by the public on FMV or royalty rates, except those portions identified as proprietary by the commentator and meeting exemptions stated in the Freedom of Information Act, are available for public inspection during normal business hours in the BLM Public Room.

Kurt Barton,

Solid Minerals Staff, Division of Energy, Lands and Minerals.

[FR Doc. E7–7807 Filed 4–24–07; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0008]

Civil Rights Division; Agency Information Collection Activities: Proposed Collection; Comments Requested: Coordination and Review Section, Civil Rights Division, United States Department of Justice

ACTION: 60-day notice of information collection under review: COR complaint form.

The Department of Justice (DOJ), Civil Rights Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for

''sixty days'' until June 25, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Merrily Friedlander, Chief, USDOJ–CRT–COR, 950 Pennsylvania Avenue, NW–NWB, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Complaint Form.

(3) *Agency form number:* 1190–0008.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* General Public.

Information is used to find jurisdiction to investigate the alleged discrimination, to seek whether a referral to another agency is necessary and to provide information needed to initiate investigation of the complaint. Respondents are individuals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2000 respondents will complete each form within approximately 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1000 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: April 20, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E7–7885 Filed 4–24–07; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0011]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Application to make and register a firearm.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 25, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Schaible, National Firearms Act Branch, 244 Needy Road, Martinsburg, WV 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application To Make and Register a Firearm.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 1 (5320.1). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit, State, Local, or Tribal Government. The form is used by persons applying to make and register a firearm that falls within the purview of the National Firearms Act. The information supplied by the applicant on the form helps to establish the applicant's eligibility.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,071 respondents will complete a 4-hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 4,284 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: April 19, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E7–7889 Filed 4–24–07; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0012]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: notice of firearms manufactured or imported.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 25, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Schaible, National Firearms Act Branch, 244 Needy Road, Martinsburg, WV 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Firearms Manufactured or Imported.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 2 (5320.2). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* State, Local or Tribal Government. ATF F 2 (5320.2) is used by a federally qualified firearms manufacturer or importer to report firearms manufactured or imported and to have these firearms registered in the National Firearms Registration and Transfer Record as proof of the lawful existence of the firearm.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 816 respondents will complete a 45-minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 3,750 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: April 19, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E7–7890 Filed 4–24–07; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0030]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: extension of a currently approved collection: capital punishment report of inmates under sentence of death.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collected is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 25, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Tracy L. Snell, Statistician (202) 616–3288, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW, Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the Form/Collection:* Capital Punishment Report of Inmates Under Sentence of Death.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: NPS–8 Report

of Inmates Under Sentence of Death; NPS–8A Update Report of Inmates Under Sentence of Death; NPS–8B Status of Death Penalty Statutes—No Statute in Force; and NPS–8C Status of Death Penalty Statutes—Statute in Force. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract: Primary:* State Departments of Corrections and Attorneys General. Others: The Federal Bureau of Prisons. Approximately 104 respondents (2 from each State, the District of Columbia, and the Federal Bureau of Prisons) responsible for keeping records on inmates under sentence of death in their jurisdiction and in their custody will be asked to provide information for the following categories: condemned inmates' demographic characteristics, legal status at the time of capital offense, capital offense for which imprisoned, number of death sentences imposed, criminal history information, reason for removal and current status if no longer under sentence of death, method of execution, and cause of death by means other than execution. The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, the U.S. Supreme Court, State officials international organizations, researchers, students, the media, and others interested in criminal justices statistics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 142 responses at 30 minutes each for the NPS–8; 3,320 responses at 30 minutes for the NPS–8A; and 52 responses at 15 minutes each for the NPS–8B and NPS–8C.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,744 annual total burden hours associated with the collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW, Washington, DC 20530.

Dated: April 19, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E7–7887 Filed 4–24–07; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 19, 2007.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not a toll-free numbers), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Application for a Permit to Fire More than 20 Boreholes for the use of Non-permissible Blasting Units, Explosives and Shot-firing Units.

OMB Number: 1219–0025.

Form Number: None.

Type of Response: Reporting and Third-party disclosure.

Affected Public: Private Sector: Business or other for-profit (mining industry).

Number of Respondents: 50.

Estimated Number of Annual Responses: 107.

Average Response Time: 1 hour to prepare and submit a permit application and 20 minutes to prepare and post a notice warning that an un-disposed misfire is present.

Estimated Annual Burden Hours: 69.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $635.

Description: Under Section 313 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 873, any explosives used in underground coal mines must be permissible. The Mine Act also provides that under safeguards prescribed by the Secretary of Labor, a mine operator may permit the firing of more than 20 shots and the use of non-permissible explosives in sinking shafts and slopes from the surface in rock. Title 30 CFR 75.1321 outlines the procedures by which a permit may be issued for the firing of more than 20 boreholes and/or the use of non-permissible shot-firing units in underground coal mines. In those instances in which there is a misfire of explosives, 30 CFR 75.1327 requires that a qualified person post each accessible entrance to the affected area with a warning to prohibit entry. Title 30 CFR 77.1909–1 outlines the procedures by which a coal mine operator may apply for a permit to use non-permissible explosives and/or shot-firing units in the blasting of rock while sinking shafts or slopes for underground coal mines.

To obtain a permit, the mine operator files an application with the MSHA district manager in the district in which the mine is located. Applications may be mailed or faxed, using company letterhead stationery and should contain the name and address of the mine, the designated active workings in which the units will be used and the approximate number of shots to be fired, the period of time during which such units are to be used, the nature of the development or construction for which they will be used, a plan to protect miners, a statement of the specific hazards anticipated, and the method to be employed to avoid the dangers anticipated.

The district manager may permit the firing of more than 20 boreholes of permissible explosives in a round where he has determined that it is necessary to

reduce the overall hazard to which miners are exposed during underground blasting. The district manager issues a permit to use non-permissible items when he finds that a permissible shot-firing unit does not have adequate blasting capacity and the use of such permissible units will create development or construction hazards. As a condition of use, the district manager may include safeguards, in addition to those proposed by the operator, that he determines are necessary to protect the safety of the miners at the time the blasting is permitted collection.

MSHA uses the information requested to issue a permit to the mine operator for the use of non-permissible explosives and/or shot-firing units. The permit informs mine management and the miners of the steps to be employed to protect the safety of any person exposed to such blasting while using non-permissible items.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–7823 Filed 4–24–07; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Employer's First Report of Injury or Occupational Disease (LS–202) and Employer's Supplementary Report of Accident or Occupational Illness (LS–210). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 25, 2007.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States and adjoining area customarily used by an employee in loading, unloading, repairing, or building a vessel. The LS–202 is used by employers initially to report injuries that have occurred which are covered under the Longshore Act and its related statutes. The LS–210 is used to report additional periods of lost time from work. The LS–205 has been removed from this collection since the physicians that need to complete this form have commented that they prefer to submit their own narrative reports, which allows them to better explain a claimant's condition. This information collection is currently approved for use through October 31, 2007.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses

III. Current Actions

The Department of Labor seeks the extension of approval of this information collection in order to ensure that employers are complying with the reporting requirements of the Act and to ensure that injured claimants receive all compensation benefits to which they are entitled.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Employer's First Report of Injury or Occupational Disease (LS–202); Employer's Supplementary Report of Accident or Occupational Illness (LS–210).

OMB Number: 1215–0031.

Agency Number: LS–202, and LS–210.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Total Respondents: 25,713.

Total Annual Responses: 26,381.

Form	Total respondents	Average time per response	Burden hours
LS–202	25,713	15 minutes	6,428
LS–210	668	15 minutes	167
Total	26,381		6,595

Estimated Total Burden Hours: 6,595.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $11,080.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 19, 2007.

Hazel Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E7–7819 Filed 4–24–07; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Request for State or Federal Workers' Compensation Information (CM–905). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 25, 2007.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. 901) and 20 CFR 725.535, require that DOL Black Lung benefit payments to a beneficiary for any month be reduced by any other payments of State or Federal benefits for workers' compensation due to pneumoconiosis. To ensure compliance with this mandate, DCVMWC must collect information regarding the status of any state or Federal workers' compensation claim, including dates of payments, weekly or lump sum amounts paid, and other fees or expenses paid out for this award, such as attorney fees and related expenses associated with pneumoconiosis. Form CM–905 is used to request the amount of those workers' compensation benefits. This information collection is currently approved for use through September 30, 2007.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to gather information to determine the amounts of black lung benefits paid to beneficiaries. Black Lung amounts are reduced dollar for dollar, for other black lung related workers' compensation awards the beneficiary may be receiving from State or Federal programs.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Request for State or Federal Workers' Compensation Information.

OMB Number: 1215–0060.

Agency Number: CM–905.

Affected Public: Federal government; State, Local or Tribal Government.

Total Respondents: 1,400.

Total Annual Responses: 1.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 350.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $588.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 18, 2007.

Hazel Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E7–7820 Filed 4–24–07; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Labor Standards for Federal Service Contracts 29 CFR, Part 4. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 25, 2007.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail

bell.hazel@dol.gov. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

Section 2(a) of the Service Contract Act (41 U.S.C. 351) provides that every contract subject to the Act must contain a provision specifying the minimum monetary wages and fringe benefits to be paid to the various classes of service employees performing work on the contract. This information collection pertains to records needed to determine an employee's seniority for purposes of determining any vacation benefit, to conform wage rates where they do not appear on a wage determination (WD), and to update WDs because of changing terms in a collective bargaining agreement. This information collection is currently approved for use through September 30, 2007.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order carry out the provisions of the Labor Standards for Federal Service Contracts.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Labor Standards for Federal Service Contracts—Regulations 29 CFR, Part 4.

OMB Number: 1215–0150.

Affected Public: Business or other for-profit; Federal Government.

Total Respondents: 50,812.

Time per Response: 50,812.

Requirement	Number of respondents	Average time per responses	Burden hours
Vacation Benefit Seniority List	48,984	1 hour	48,984
Conformance Record	200	½ hour	100
Collective Bargaining Agreement	1628	5 minutes	136
Total	50,812		49,220

Frequency: On occasion.

Estimated Total Burden Hours: 49,220.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 18, 2007.

Hazel Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E7–7821 Filed 4–24–07; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Proposed Collection, Submission for OMB Review; General Clearance for Grant Application and Report Forms

AGENCY: Institute of Museum and Library Services.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the contact section below on or before May 25, 2007.

OMB is particularly interested in comments that help the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collocation of information including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Barbara G. Smith, E-Projects Officer, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC. Ms. Smith can be reached by telephone: 202–653–4688; fax: 202–653–8625; or e-mail: *bsmith@imls.gov*.

SUPPLEMENTARY INFORMATION:

Background: The Institute of Museum and Library Services (IMLS) is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Pub. L. 104–208. The Institute of Museum and Library Services is the primary source of federal support for the nation's 122,000 libraries and 17,500 museums. The Institute's mission is to create strong libraries and museums that connect people to information and ideas. The

Institute works at the national level and in coordination with state and local institutions and organizations to sustain heritage, culture, and knowledge; enhance learning and innovation; and support professional development. To carry out its statutory mission the Institute administers a number of discretionary and formula grant programs to strengthen museum and library service in the United States.

The Institute provides funding opportunities to the full range of museums, including art, history, science and technology, children's, natural history, historic houses, nature centers, botanical gardens and zoos; and all type of libraries including public, school, academic, research and archives. The Institute provides funding and encouragement to spur research, evaluation, policy analysis and partnerships making it possible for museums and libraries to be leaders in their communities.

The information collected in the Institute's grant application and reporting forms is needed so that the Institute can to support the most effective library and museum practices and disseminate project results that can raise standards throughout the nation.

Current Actions: This notice proposes general clearance of the agency's guideline application and report forms. The 60-day Notice for the ''General Clearance for Guidelines, Applications, and Reporting Forms'' was published in the **Federal Register** on November 3, 2006 (FR vol. 71, No. 213, pgs. 64746–64747.) No comments were received.

Agency: Institute of Museum and Library Services.

Title: IMLS Guidelines, Applications and Reporting Forms.

OMB Number: 3137–0029, 3137–0049, 3137–0056, 3137–0057; 3137–0060; 3137–0065.

Agency Number: 3137.

Frequency: Annually, Semi-annually.

Affected Public: State Library Administrative Agencies, museums, libraries, institutions of higher education, library and museum professional associations, museum and library professionals, and Native American tribes.

Number of Respondents: 1,700.

Estimated Time per Respondent: .25–60 hours.

Total Burden Hours: 65,735.

Total Annualized capital/startup costs: 0.

Total Annual Costs: $1,553,975.

FOR FURTHER INFORMATION CONTACT: Comments should be sent to the Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316.

Dated: April 19, 2007.

Barbara G. Smith,

E-Projects Officer, Office of Information Resources Management.

[FR Doc. E7–7818 Filed 4–24–07; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:*

NRC Form 136, ''Security Termination Statement'',

NRC Form 237, ''Request for Access Authorization'',

NRC Form 277, ''Request for Visit''.

3. *The form number if applicable:*

NRC Form 136,

NRC Form 237,

NRC Form 277.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* NRC Form 136, any employee of 68 licensees and 7 contractors, who has been granted an NRC access authorization; NRC Form 237, any employee of approximately 68 licensees and 7 contractors who will require access authorization. NRC Form 277, any employee of 2 current NRC contractors who holds an NRC access authorization, and needs to make a visit to NRC, other contractors/licensees or government agencies in which access to classified information will be involved or unescorted area access is desired.

6. *An estimate of the number of annual responses:*

NRC Form 136: 225.

NRC Form 237: 420.

NRC Form 277: 6.

7. *The estimated number of annual respondents:*

NRC Form 136: 75.

NRC Form 237: 75.

NRC Form 277: 2.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:*

NRC Form 136: 23.

NRC Form 237: 84.

NRC Form 277: 1.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* The NRC Form 136 affects the employees of licensees and contractors who have been granted an NRC access authorization. When access authorization is no longer needed, the completion of the form apprizes the respondents of their continuing security responsibilities. The NRC Form 237 is completed by licensees, NRC contractors or individuals who require an NRC access authorization. The NRC Form 277 affects the employees of contractors who have been granted an NRC access authorization and require verification of that access authorization and need-to-know in conjunction with a visit to NRC or another facility.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 25, 2007. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Desk Officer, Office of Information and Regulatory Affairs (3150–0049; –0050; –0051), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Margaret_A._Malanoski@omb.eop.gov* or submitted by telephone at (202) 395–3122.

The NRC Clearance Officer is Margaret A. Janney, 301–415–7245.

Dated at Rockville, Maryland, this 18th day of April, 2007.

For the Nuclear Regulatory Commission.

Margaret A. Janney,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–7844 Filed 4–24–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 21, ''Reporting of Defects and Noncompliance.''

2. *Current OMB approval number:* 3150–0035.

3. *How often the collection is required:* As necessary in order for NRC to meet its responsibilities to conduct a detailed review of defects in basic components of nuclear power plants or failures to comply that could create a substantial safety hazard.

4. *Who is required or asked to report:* All directors and responsible officers of firms and organizations building, operating, owning, or supplying basic components to NRC licensed facilities.

5. *The number of annual respondents:* 35.

6. *The number of hours needed annually to complete the requirement or request:* 7,574 hours (4,970 hours reporting and 2,604 hours recordkeeping).

7. *Abstract:* 10 CFR part 21 implements Section 206 of the Energy Reorganization Act of 1974 (42 U.S.C. 5846), as amended. Section 206 requires individual directors and responsible officers of firms constructing, owning, operating, or supplying the basic components of any facility or activity licensed under the Atomic Energy Act to report immediately to the Commission the discovery of defects in basic components or failures to comply that could create a substantial safety hazard (SSH). In addition to imposing obligations on the individual directors and responsible officers of NRC licensees, Section 206 also imposes obligations on the directors and responsible officers of non-licensees that construct facilities for, or supply basic components to, licensed facilities or activities. Any individual officer or director who knowingly fails to comply with the notification requirements is subject to civil penalties.

Submit, by June 25, 2007, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Margaret A. Janney (T5–F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7245, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 18th day of April 2007.

For the Nuclear Regulatory Commission.

Margaret A. Janney,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–7846 Filed 4–24–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Information pertaining to the requirement to be submitted:

1. *Type of submission:* Revision.

2. *The title of the information collection:* Office of Federal and State Materials and Environmental Management Programs Requests to Agreement States For Information.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* One time or as needed.

5. *Who is required or asked to report:* Thirty-four Agreement States who have signed Section 274(b) Agreements with NRC.

6. *An estimate of the number of annual responses:* 142.

7. *The estimated number of annual respondents:* 34.

8. *The number of hours needed annually to complete the requirement or request:* 1,066.

9. *Applicability of Section 3507(d) of Pub. L. 104–13:* Not applicable.

10. *Abstract:* Agreement States are asked on a one-time or as-needed basis to respond to a specific incident, to gather information on licensing and inspection practices and other technical statistical information. The results of such information requests, which are authorized under Section 274(b) of the Atomic Energy Act, are utilized in part by NRC in preparing responses to Congressional inquiries. Agreement State comments are also solicited in the areas of proposed procedure and policy development.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 25, 2007. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be

given to comments received after this date. Desk Officer, Office of Information and Regulatory Affairs (3150–0029), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Margaret_A._Malanoski@omb.eop.gov* or submitted by telephone at (202) 395–3122.

The NRC Clearance Officer is Margaret A. Janney, 301–415–7245.

Dated at Rockville, Maryland, this 18th day of April, 2007.

For the Nuclear Regulatory Commission.

Margaret A. Janney,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–7847 Filed 4–24–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: RI 38–128

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of a revised information collection. RI 38–128, It's Time to Sign Up for Direct Deposit, is primarily used by OPM to give recent retirees the opportunity to waive Direct Deposit of their annuity payments. The form is sent only if the separating agency did not give the retiring employee this election opportunity. This form may also be used to enroll in Direct Deposit, which was its primary use before Public Law 104–134 was passed. This law requires OPM to make all annuity payments by Direct Deposit unless the payee has waived the service in writing.

Approximately 20,000 forms are completed annually. The form takes approximately 30 minutes to complete. The annual estimated burden is 10,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, Fax (202) 418–3251 or via e-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540, and

Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Tricia Hollis,

Chief of Staff.

[FR Doc. E7–7824 Filed 4–24–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Extension of a Currently Approved Information Collection: RI 38–115

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for extension of a currently approved information collection. RI 38–115, Representative Payee Survey, is used to collect information about how the benefits paid to a representative payee have been used or conserved for the benefit of the incompetent annuitant.

Approximately 11,000 RI 38–115 forms are completed annually. The form takes approximately 20 minutes to complete. The annual estimated burden is 3,667 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540, and

Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

Office of Personnel Management.

Tricia Hollis,

Chief of Staff.

[FR Doc. E7–7825 Filed 4–24–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: RI 20–63, RI 20–116, RI 20–117

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 20–63, Survivor Annuity Election for a Spouse, is used by annuitants to elect a reduced annuity with a survivor annuity for their spouse. RI 20–116 is a cover letter for RI 20–63 giving information about the cost to elect less than the maximum survivor annuity. This letter may be used to decline to elect. RI 20–117 is a cover letter for RI 20–63 giving information about the cost to elect the maximum survivor annuity. This letter may be used to ask for more information or to decline to elect.

RI 20–117 is accompanied by RI 20–63A, Information on Electing a Survivor Annuity for Your Spouse, or RI 20–63B, Information on Electing a Survivor Annuity for Your Spouse When You Are Providing a Former Spouse Annuity. Both booklets explain the election. RI 20–63A is for annuitants who do not

have a former spouse who is entitled to a survivor annuity benefit. RI 20–63B is for those who do have a former spouse who is entitled to a benefit. These booklets do not require OMB clearance. They have been included because they provide the annuitant additional information.

Approximately 2,400 RI 20–63 forms are returned each year electing survivor annuities and 200 annuitants return the cover letter to ask for information about the cost to elect less than the maximum survivor annuity or to refuse to provide any survivor benefit. It is estimated to take approximately 45 minutes to complete the form with a burden of 1,800 hours and 10 minutes to complete the letter, which gives a burden of 34 hours. The total burden for RI 20–63 is 1,834 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540, and

Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Team Leader, Publication Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Tricia Hollis,

Chief of Staff.

[FR Doc. E7–7826 Filed 4–24–07; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of April 23, 2007:

A Closed Meeting will be held on Thursday, April 26, 2007 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, April 26, 2007 will be:

Formal orders of investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Litigation matters; and

Other matters related to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: April 19, 2007.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E7–7835 Filed 4–24–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55644; File No. SR–CBOE–2007–27]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Class Quoting Limits

April 19, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 5, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange submitted Amendment No. 1 to the proposed rule change on April 18, 2007. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange submits this rule filing to amend CBOE Rule 8.3A pertaining to Class Quoting Limits. The proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Office of the Secretary, CBOE, and at the Commission's public reference room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

BOE Rule 8.3A establishes the upper limit, *i.e.*, Class Quoting Limit (''CQL''), on the number of members that may quote electronically in a particular product traded on CBOE's Hybrid Trading System and Hybrid 2.0 Platform (collectively ''Hybrid'').[3]

The purpose of this rule change is to amend CBOE Rule 8.3A to adopt an interpretation which is applicable only in those option classes traded on Hybrid in which the CQL for the option class is full and there is a waiting list of member(s) requesting the ability to quote electronically in the option class. Specifically, in the event a Market-Maker or Remote Market-Maker

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51429 (March 24, 2005), 70 FR 16536 (March 31, 2005) (approving SR–CBOE–2005–58).

(''RMM'') who holds an appointment in an option class traded on Hybrid has not submitted any electronic quotations in that option class during the preceding 30 days (calculated on a rolling basis), then the Market-Maker or RMM's appointment in that option class will be terminated effective immediately. CBOE will notify the Market-Maker or RMM prior to terminating its appointment, and the rule provides that CBOE can make exceptions to this Interpretation and Policy in unusual circumstances.

The Market-Maker or RMM can subsequently request an appointment in the option class. If there is a wait-list of members requesting the ability to quote electronically, then the Market-Maker or RMM will be placed on the wait-list for the option class.

Although CBOE anticipates that this situation may arise in only a handful of option classes from time to time, absent this interpretation, the CQL in these option classes could be met even though some number of appointed Market-Makers or RMMs are not submitting electronic quotations. As a consequence, other members who might be willing to provide competitive quotations and liquidity in that option class would be prevented from doing so unless CBOE determined to increase the CQL under the provisions of Rule 8.3A.

CBOE believes that this interpretation is consistent with the purpose of Rule 8.3A, which as noted above is to limit the number of members that are quoting electronically in a particular product to ensure that the Exchange has the ability to effectively handle all quotes generated by members. Although CBOE believes that it has the authority to terminate appointments of Market-Makers and RMMs under its existing Rule 8.3 and Rule 8.4,[4] CBOE determined to adopt this interpretation to specifically address the situation in which the CQL for the option class is full and there is a waiting list of member(s) requesting the ability to quote electronically in the option class, and the Market-Makers or RMMs who hold an appointment in an option class have chosen not to submit any electronic quotations during the preceding 30 days. CBOE intends to implement the proposal upon approval by the Commission.

2. Statutory Basis

CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2007–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–27. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–27 and should be submitted on or before May 16, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–7837 Filed 4–24–07; 8:45 am]

BILLING CODE 8010–01–P

[4] Rule 8.3(a) provides that ''[t]he Exchange may suspend or terminate any Appointment of a Market-Maker under this rule and may make additional appointments whenever, in the Exchange's judgment, the interests of a fair and orderly market are best served by such action.'' Rule 8.4(e) contains similar language.

[5] 15 U.S.C. 78(f)(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55645; File No. SR–NASDAQ–2007–040]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Waiver of Fees Upon Relisting of Companies Removed for Late Filings

April 19, 2007.

Pursuant to section 19(b)(1) of the securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 4, 2007, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to allow, in certain circumstances, a company to relist without paying a new entry and application fee if the Company was delisted solely for the failure to file a required periodic report with the Commission or other appropriate regulatory authority. Nasdaq also proposes to delete a separate, duplicative provision in the rules. The text of the proposed rule change appears below. Proposed new language is italicized and proposed deletions are in brackets.[3]

* * * * *

IM–4500–5. Waiver of Fees Upon Relisting for Companies Removed for Late Filings Entry Fees. Pursuant to Nasdaq's authority to waive certain fees, Nasdaq has determined to waive the entry fee (including the application fee) in the following circumstances:

(1) the company was suspended and/or delisted from the Nasdaq Stock Market solely for its failure to file a required periodic report with the Commission or other appropriate regulatory authority, pursuant to Rule 4310(c)(14) or 4320(e)(12); and

(2) the company has regained compliance with this requirement and applies to relist on Nasdaq within one year of the date it is delisted from Nasdaq.

Annual Fees. A company that meets the above requirements and relists during the same year that it has previously paid an annual fee will not be subject to a second annual fee in that same year.

* * * * *

4520. The Nasdaq Capital Market

(a) No change.

(b) No change.

(1)–(5) No change.

[(6) The issuer of each class of securities that is a non-U.S. issue that is listed on the Nasdaq Capital Market shall pay to Nasdaq a fee in connection with the issuance of additional shares, or in the case of ADRs, the listing of additional shares underlying the ADRs. The fee in connection with additional shares shall be $5,000 for any amount of additional shares listed on an annual basis. This fee will be assessed annually based on the issuer's total shares outstanding as reported on its periodic reports filed with the SEC. There shall be no fee, however, for issuances of up to 49,999 additional shares per year.]

(c)–(e) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Existing Nasdaq rules provide the authority to waive entry, application and annual fees.[4] Pursuant to this authority, Nasdaq has determined to waive the entry and application fee for any company that was suspended[5] and/or delisted from the Nasdaq Stock Market solely for its failure to file a required periodic report with the Commission or other appropriate regulatory authority, if the company regains compliance with this requirement and applies to relist on Nasdaq within one year of the date it is delisted from Nasdaq. In addition, if such a company relists during the same calendar year that it has previously paid an annual fee, the company will not be subject to a second annual fee in that same year.

Nasdaq believes that this waiver is appropriate given that, on average, the review of such an issuer is likely to be simpler than the typical application for several reasons. First, because these companies were previously listed on Nasdaq and compliant with all requirements except the filing requirement, it is more likely that they will be compliant with all other quantitative and qualitative

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaq.complinet.com*.

[4] Nasdaq Rules 4510(a)(5), 4520(a)(4), 4530(a)(4) and 4540(a)(2) provide authority to waive entry and application fees and Nasdaq rules 4510(c)(2), 4510(d)(5), 4520(c)(4), 4530(b)(2) and 4540(b)(3) provide authority to waive annual fees. Nasdaq notes that in several prior instances, the predecessor market operated by The Nasdaq Stock Market, Inc. as a facility of the NASD filed listing fee waivers of general applicability on an immediately effective basis, pursuant to SEC rule 19b–4(f)(1), 17 CFR 240.19b–4(f)(1), as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of these existing rules. *See, e.g.*, Securities Exchange Act Release No. 49133 (January 28, 2004), 69 FR 5630 (February 5, 2004) (SR–NASD–2003–198); Securities Exchange Act Release No. 49286 (February 19, 2004), 69 FR 8999 (February 26, 2004) (SR–NASD–2004–004). More recently, the New York Stock Exchange has submitted a filing to waive listing fees subject to Commission approval under section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2). *See* Securities Exchange Release No. 55421 (March 8, 2007), 72 FR 11925 (March 14, 2007) (SR–NYSE–2007–19). As a result, Market Regulation staff has advised Nasdaq that this proposed rule change should also be filed under section 19(b)(2). Although Nasdaq is following staff's guidance in this case, Nasdaq notes that the rules authorizing waivers of listing fees have been in effect for an extensive period of time, having first been approved as NASD rules in 1991, and then re-approved by the Commission as rules of Nasdaq during its registration as a national securities exchange. Accordingly, it is Nasdaq's view that nothing in this filing should be construed to restrict Nasdaq's approved authority to waive listing fees with respect to particular issuers in appropriate circumstances, nor should this filing be construed to restrict the submission of filings on an immediately effective basis in appropriate circumstances.

The Commission notes that the waiver authority referred to in the Nasdaq Rules was specifically intended to grant Nasdaq flexibility to waive fees on a case-by-case basis. *See* Securities Exchange Release No. 28731 (January 2, 1991), 56 FR 906 (January 9, 1991) (SR–NASD–90–61). The Commission does not believe it is, as a general matter, appropriate to allow for the waiver of fees to a class of non-members without first providing interested persons an opportunity to comment on the proposed rule change pursuant to section 19(b)(2) under the Act.

[5] Nasdaq Rule 4802(f) requires a security to meet the requirements for initial listing (which include the requirement to pay the applicable listing fees) if the security has been the subject of a decision to delist by a Listing Qualifications Panel, the Nasdaq Listing and Hearing Review Council or the Nasdaq Board.

requirements. Further, relevant information about these companies is already contained in Nasdaq's compliance systems. Finally, Nasdaq anticipates that there would be fewer questions concerning the company's financial statements given that these companies will often have undergone extensive review by their auditors and, in some cases, by independent investigators and the Commission or other regulatory entities, in order to resolve the issues that caused the late filings.

Nasdaq is implementing these waivers to incent companies to re-list on Nasdaq once they regain compliance with the periodic filing requirement, rather than seek a listing elsewhere. Nasdaq believes that this waiver is appropriate, especially because Nasdaq's rules governing the delisting of companies that are delinquent in periodic reports are generally stricter than those of other markets. As such, the proposed waivers will promote competition between Nasdaq and other exchange markets.

The proposed rule change will not affect Nasdaq's commitment of resources to its regulatory oversight of the listing process or its other regulatory programs. Specifically, Nasdaq will still conduct a complete review of these companies for compliance with Nasdaq listing standards in the same manner as any other company applying for listing on Nasdaq. Any fee waiver under this proposed rule is predicated on the Company successfully completing that review process and demonstrating compliance with the initial listing requirements.

Finally, Nasdaq proposes to delete a duplicative provision in Rule 4520(b). Currently, Rule 4520(b)(6) is identical to Rule 4520(b)(2). As such, Nasdaq proposes to delete Rule 4520(b)(6).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular. Nasdaq believes that the proposed waivers are equitable and reasonable because these companies previously paid entry and annual fees to Nasdaq and to again charge such fees would impose duplicative costs.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2007–040 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2007–040. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2007–040 and should be submitted on or before May 16, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–7838 Filed 4–24–07; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55646; File No. SR–NYSE–2007–02]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Adopt New Rule 447 (''Emergency Powers'')

April 19, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 9, 2007, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NYSE. On April 18, 2007, NYSE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Rule 447 (''Emergency Powers'') which would allow the Exchange to grant exemptive regulatory relief in the event of an emergency, *e.g.* a pandemic-like situation. The text of the proposed rule change is available at NYSE, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Introduction

Currently, the Exchange does not, in the normal course, grant plenary exemptive relief to member organizations from the requirements of NYSE rules. The Exchange is proposing to obtain authorization to provide such relief, in the rare event of overwhelming need, such as a pandemic, by way of the new proposed NYSE Rule 447.

In the wake of recent media attention and industry concern regarding the potential for a pandemic flu outbreak,[4] proposed Rule 447 would provide the Exchange with a basis of authority pursuant to which it may consider granting exemptive regulatory relief during such an emergency.

In implementation of the duty to enforce regulatory compliance, self-regulatory organizations (''SROs'') possess inherent authority to administer and interpret their own rules. This authority comprehends the ability to grant relief from the formal strictures of a specific provision where the conduct sought to be effected, in any single given instance, is otherwise consistent with the purpose and intent of that rule. However, the Exchange does not have a medium for granting interim, but categorical relief to a class of its membership across rule lines—as circumstances may necessitate, and/or to impose additional and more rigorous requirements in response to emergency conditions. The purpose of the proposed rule is to provide such a mechanism and thereby grant the Exchange the regulatory flexibility to grant member organizations relief in the event of an emergency, as defined.

Indeed, many of the types of relief envisioned under the proposed rule illustrate the general circumspection with respect to which requests for relief would be viewed. While recourse to the rule would be limited to ''major disturbances'' in regard to which the Commission is statutorily authorized to alter, suspend, or impose requirements or restrictions of matters subject to regulation by it or SROs, the nature of the relief to be granted would necessarily serve to mitigate the effects of the disruption so that the markets may perform in a manner consistent with customer expectations. Likely, the same manner of consequences to affect the investing public would similarly impact personnel of the securities industry such that they would equally need to address these external forces and factors.

Background

Existing NYSE Rules

NYSE Rule 446 (''Business Continuity and Contingency Plans'') governs business continuity and contingency planning for member organizations. While the rule does not require that member organizations remain in business in the event of a significant business disruption, it does require firms to have a plan in place establishing procedures reasonably designed to enable the member organization to meet existing obligations to customers, other broker-dealers, and counter-parties.[5] In an effort to assist and enable member organizations in the context of an emergency to remain in compliance with NYSE rules, the Exchange is proposing new Rule 447 to apply where regulatory flexibility may be necessary to address the emergency atmosphere which could result in the event of a pandemic or other similar type event. Easing circumstances for facilitating member organizations to remain in business would facilitate the orderly flow of the markets while also providing for the protection of investors.

Federal Exemptive Relief

Section 12(k)(2) of the Act[6] empowers the SEC, in an emergency, to take summary action to alter, suspend, or supplement requirements or restrictions with respect to any matter subject to regulation by the Commission or an SRO. Section 12(k)(7) of the Act[7] defines the term ''emergency'' to include ''a major disturbance that substantially disrupts, or threatens to substantially disrupt the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets* * *.''

Proposed NYSE Rule 447

General Rule

Proposed Rule 447 allows the Exchange, with the concurrence of the Commission that an ''emergency'' exists, where it is necessary in the public interest and for the protection of investors, and on such conditions, if any, which it may impose, to grant certain regulatory relief to member organizations. The Exchange may take action in implementation of the proposed rule at its discretion, after seeking the concurrence of the Commission as to the type of relief that may be appropriate in the circumstances, in respect of any member organization, any class or category of member organization, or in respect of all member organizations and/or their personnel.

The Exchange would seek the concurrence of the SEC by alerting Commission staff electronically or via telephone as to the type of action the Exchange would take in implementation of the proposed rule. NYSE staff would make a good faith effort to have a conversation with Commission staff. However, if NYSE staff is unable to reach SEC staff, it may take action and advise the SEC of such action in an expedient manner. Pursuant to conversations with Commission staff, the Exchange may move forward with the appropriate relief in good faith without formal agreement from the Commission so as to provide timely relief to member organizations in an emergency.

Specific Regulatory Relief

Under the proposed rule, the Exchange may elect to defer or extend Exchange-imposed time frames (otherwise applicable) for: Filing documents or reports with the Exchange (other than trade reports or reports arising from the settlement of transactions); obtaining Exchange approval, where such approval is required; requesting margin extensions via Exchange automated extension processing systems; or complying with testing, training, or continuing education requirements. The Exchange may ''defer'' time frames where it is appropriate to put off or delay the due dates for submissions or approvals until an unknown date, based on the circumstances of the emergency. Otherwise, the Exchange may ''extend'' time frames to a fixed date in the future.

In addition, the proposed rule gives the Exchange authority, upon customer consent, to permit recourse to means and systems not customarily utilized by broker-dealers for: The direct receipt,

[4] *See* NYSE Information Memo 06–30 (May 5, 2006) for further guidance.

[5] *See* NYSE Information Memos 04–24 (May 3, 2004) and 05–80 (October 13, 2005) for additional guidance.

[6] 15 U.S.C. 78*l*(k)(2).

[7] 15 U.S.C. 78*l*(k)(7).

transmission, or delivery of funds and securities, to and from customers; the valuation of securities; and the transmission of statements, confirmations, proxy materials, and other functionally equivalent material. This would allow broker-dealers to work with the Exchange to determine alternative means and systems to most effectively serve their customers and the public interest in the event of an emergency.

The proposed rule would allow the Exchange to permit the closure of main offices during an emergency. The Exchange may also elect to recognize alternative testing and/or qualification criteria for tests or criteria otherwise required as a prerequisite to the assumption of a position or function.

Under proposed Rule 447, the Exchange may modify or waive, in whole or in part, requirements pertaining to the registration and supervision of branch offices and their personnel and the payment of late fees. This relief would not apply to the requirements relating to the maintenance of books and records or the obligation for a member organization to maintain essential supervision of all its associated persons. The Exchange may provide relief which allows member organizations to implement remote supervision [8] of branch offices (including locations otherwise not eligible for such) in an emergency, which would provide flexibility for member organizations to retain the essential supervision of associated persons.

Pursuant to proposed Rule 447, the Exchange may take certain action to restrict the activities of member organizations in an emergency. The proposed rule would allow the Exchange to alter or rescind approval of a member organization's outsourcing arrangements or expand the requirements or prerequisites applicable to such. The Exchange may also require the curtailment or reduction of business activity and/or solicitation of new accounts or new products.[9] Moreover, the Exchange may require the enhancement of insurance coverage; the closure of offices or locations; and/or the addition of supervisory personnel or procedures.

In addition to the actions noted above, the proposed rule gives the Exchange authority to take such other similar action, or withhold taking similar action, in anticipation of, during the course of, or as a consequence of, an emergency.

Timing

In implementation of the proposed rule, the Exchange would grant regulatory relief for a maximum of 90 days, and would be wary of situations which would impede access by customers to their funds or securities. Upon the passage of 90 days from the initial action by the Exchange, the Exchange may find, with the concurrence of the Commission, that an emergency continues to exist. Upon such a finding, the Exchange would re-evaluate the types of relief granted and, after seeking the concurrence of the Commission, determine whether to further extend such relief, provide alternative relief, or cease the grant of such relief.

If the Exchange determines not to extend the regulatory relief past 90 days, it would alert member organizations to the date on which the relief would expire via Information Memo and/or the Exchange's Electronic Filing Platform (''EFP'').[10] The Exchange would supply a reasonable expiration date to allow adequate time for member organizations to adjust to the reinstatement of customary regulatory requirements.

Inasmuch as the purpose of this proposed rule is to grant authority to the Exchange to act creatively in the event of an emergency, the terms of the rule are, to a certain extent, broad and inclusive. However, the Exchange would act in a manner consistent with the public interest and for the protection of investors, and it intends to be bound by and guided by these underlying precepts should there be need to invoke the rule and exercise the power therein.

2. Statutory Basis

The statutory basis for this proposed rule change is Section 6(b)(5) of the Act.[11] Section 6(b)(5) requires, among other things, that rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The proposed rule will provide the Exchange with the regulatory flexibility to grant member organizations relief, as necessary, in the event of an emergency, as defined.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period; (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which NYSE consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–02. This file number should be included on the subject line if e-mail is used. To help the

[8] *See* NYSE Information Memo 05–74 (October 6, 2005); *see also* SEC Staff Legal Bulletin No. 17 (March 19, 2004) regarding supervision of remote locations.

[9] Under NYSE Rule 326, the Exchange may impose restrictions on a member organization's business activities if it fails to maintain, among other things, the capital requirements of Rule 15c3–1 under the Act. The proposed rule grants the Exchange authority to require member organizations to limit or reduce business activities in an emergency, regardless of whether the firm is in compliance with these provisions.

[10] EFP is an extranet built by the NYSE to support authenticated, encrypted, two-way communications between the NYSE and its membership. It is used to communicate information to certain key personnel of member organizations.

[11] 15 U.S.C. 78f(b)(5).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2007–02 and should be submitted on or before May 16, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–7836 Filed 4–24–07; 8:45 am]

BILLING CODE 8010–01–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of a temporary, emergency amendment to sentencing guidelines, policy statements, and commentary.

SUMMARY: Pursuant to section 4 of the Telephone Records and Privacy Protection Act of 2006 (the ''Telephone Act''), Pub. L. 109–476, the Commission hereby gives notice of a temporary, emergency amendment to the sentencing guidelines, policy statements, and commentary. This notice sets forth the temporary, emergency amendment and the reason for amendment.

DATES: The Commission has specified an effective date of May 1, 2007, for the emergency amendment.

[12] 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The Commission must promulgate a temporary, emergency amendment to implement the directive to section 4 of the Telephone Act by July 11, 2007. On January 30, 2007, the Commission published in the **Federal Register** an issue for comment regarding the implementation of this directive.

The temporary, emergency amendment set forth in this notice also may be accessed through the Commission's Web site at *http://www.ussc.gov.*

Authority: 28 U.S.C. 994(a), (o), (p), (x); section 4 of Pub. L. 109–497.

Ricardo H. Hinojosa,

Chair.

Pretexting

Amendment: Section 2H3.1 is amended in the heading by striking ''Tax Return Information'' and inserting ''Certain Private or Protected Information''.

Section 2H3.1(b)(1) is amended by inserting ''(A) the defendant is convicted under 18 U.S.C. § 1039(d) or (e); or (B)'' after ''If''.

The Commentary to § 2H3.1 captioned ''Statutory Provisions'' is amended by inserting ''§ 1039,'' after ''18 U.S.C.§''.

The Commentary to § 2H3.1 captioned ''Application Notes'' is amended by striking Note 1; by redesignating Note 2 as Note 1; and by inserting after Note 1, as redesignated by this amendment, the following:

''2. Imposition of Sentence for 18 U.S.C. § 1039(d) and (e).—Subsections 1039(d) and (e) of title 18, United States Code, require a term of imprisonment of not more than 5 years to be imposed in addition to any sentence imposed for a conviction under 18 U.S.C. § 1039(a), (b), or (c). In order to comply with the statute, the court should determine the appropriate 'total punishment' and divide the sentence on the judgment form between the sentence attributable to the conviction under 18 U.S.C. § 1039(d) or (e) and the sentence attributable to the conviction under 18 U.S.C. § 1039(a), (b), or (c), specifying the number of months to be served for the conviction under 18 U.S.C. § 1039(d) or (e). For example, if the applicable adjusted guideline range is 15–21 months and the court determines a 'total punishment' of 21 months is appropriate, a sentence of 9 months for conduct under 18 U.S.C. § 1039(a) plus 12 months for 18 U.S.C. § 1039(d) conduct would achieve the 'total punishment' in a manner that satisfies the statutory requirement.

3. Upward Departure.—There may be cases in which the offense level determined under this guideline substantially understates the seriousness of the offense. In such a case, an upward departure may be warranted. The following are examples of cases in which an upward departure may be warranted:

(i) The offense involved confidential phone records information of a substantial number of individuals.

(ii) The offense caused or risked substantial non-monetary harm (e.g. physical harm, psychological harm, severe emotional trauma, or a substantial invasion of privacy interest) to individuals whose private or protected information was obtained.''.

The Commentary to § 2H3.1 is amended by striking the Background Commentary. Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. § 1038 the following new line:

''18 U.S.C. § 1039 2H3.1''.

Reason for Amendment: This amendment implements the emergency directive in section 4 of the Telephone Records and Privacy Protection Act of 2006, Pub. L. 109–476. The directive, which requires the Commission to promulgate an amendment under emergency amendment authority by July 11, 2007, instructs the Commission to ''review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of any offense under section 1039 of title 18, United States Code.'' Section 1039 criminalizes the fraudulent acquisition or disclosure of confidential phone records. The penalties for violating the statute include fines and imprisonment for a term not to exceed 10 years. The statute also includes enhanced penalties for certain forms of aggravated conduct, providing for up to a five year term of imprisonment, in addition to the penalties for a violation of section 1039(a), (b), or (c). See 18 U.S.C. 1039(d), (e).

The amendment refers the new offense at 18 U.S.C. 1039 to § 2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Tax Return Information). The Commission concluded that disclosure of telephone records is similar to the types of privacy offenses referenced to this guideline. In addition, this guideline includes a cross reference, instructing that if the purpose of the offense was to facilitate another offense, that the guideline applicable to an attempt to commit the other offenses

should be applied, if the resulting offense level is higher. The Commission concluded that operation of the cross reference would capture the harms associated with the aggravated forms of this offense referenced at 18 U.S.C. 1039(d) or (e). Finally, the amendment expands the scope of the existing three-level enhancement in the guideline to include cases in which the defendant is convicted under 18 U.S.C. 1039(d) or (e). Thus, in cases where the cross reference does not apply, application of the enhancement will capture the increased harms associated with the aggravated offenses.

[FR Doc. E7–7915 Filed 4–24–07; 8:45 am]

BILLING CODE 2211–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0409]

Brook Venture Fund IIA, LP; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Brook Venture Fund IIA, LP, 301 Edgewater Place, Suite 425, Wakefield, MA 01880, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, is seeking an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Brook Venture Fund IIA, LP wishes to provide an equity financing in the amount of $1,500,000 to Repromedix Corporation.

The financing is brought within the purview of 107.730(a)(1) of the Regulations inasmuch as Brook Venture Fund II, LP is an Associate of Brook Venture Fund IIA, LP as defined in Section 107.50 of the Regulations by virtue of being its Parent Fund and because Brook Venture Fund II, LP has a current ownership interest in Repromedix Corporation equal to greater than 10 percent.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: April 20, 2007.

Harry Haskins,

Deputy Associate Administrator for Investment.

[FR Doc. E7–7839 Filed 4–24–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5782]

Determined Under Section 620(q) of the Foreign Assistance Act of 1961, as Amended, and Section 512 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 2006, as Carried Forward Under the Continuing Resolution (Pub. L. 110–5), as Amended, Relating to Assistance to the Republic of Somalia

Pursuant to the authority vested in me by Section 620(q) of the Foreign Assistance Act of 1961, as amended (FAA), and Section 512 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (FOAA), as carried forward under Continuing Resolution (Pub. L. 110–5), as amended, and by Executive Order 12163, as amended by Executive Order 13346, I hereby determine that assistance to the Republic of Somalia is in the national interest of the United States and thereby waive, with respect to that country, the application of Section 620(q) of the FAA and Section 512 of the FY 2006 FOAA, as carried forward under the Continuing Resolution (Pub. L. 110–5), as amended, and any similar provision in prior year FOAAs.

This determination shall be reported to Congress and published in the **Federal Register**.

Dated: March 12, 2007.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. E7–7918 Filed 4–24–07; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF STATE

[Public Notice 5761]

Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 3 p.m. to 5 p.m. on Wednesday, May 9, 2007, at the U.S. Department of State, 2201 C Street NW., Washington, DC. The meeting will be hosted by Assistant Secretary of State for Economic, Energy and Business Affairs, Daniel S. Sullivan and Committee Chairman R. Michael Gadbaw. The ACIEP serves the U.S. Government in a solely advisory capacity concerning issues and challenges in international economic policy. The meeting will focus on Total Economic Engagement, including a regional focus on Indonesia, industry focus on the State Department's role in international energy policy, public-private partnerships pertaining to capacity building, and the launch of the Secretary of State's 2007 Award for Corporate Excellence program.

This meeting is open to the public as seating capacity allows. Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should provide, by May 7, their name, professional affiliation, valid government-issued ID number (i.e., U.S. Government ID [agency], U.S. military ID [branch], passport [country], or drivers license [state]), date of birth, and citizenship to Ronelle Jackson by fax (202) 647–5936, e-mail (*JacksonRS@state.gov*), or telephone (202) 647–9204. One of the following forms of valid photo identification will be required for admission to the State Department building: U.S. driver's license, passport, or U. S. Government identification card. Enter the Department of State from the C Street lobby. In view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

For additional information, contact Senior Coordinator Nancy Smith-Nissley, Office of Economic Policy and Public Diplomacy, Bureau of Economic, Energy and Business Affairs, at (202) 647–1682 or *Smith-NissleyN@state.gov.*

Dated: April 17, 2007.

David R. Burnett,

Office Director, Office of Economic Policy Analysis and Public Diplomacy, Department of State.

[FR Doc. E7–7921 Filed 4–24–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2005–23112]

Motorcyclist Advisory Council to the Federal Highway Administration

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of meeting of advisory committee.

SUMMARY: This document announces the second meeting of the Motorcyclist Advisory Council to the Federal Highway Administration (MAC–FHWA). The purpose of this meeting is to advise the Secretary of Transportation, through the Administrator of the Federal Highway

Administration, on infrastructure issues of concern to motorcyclists, including (1) Barrier design; (2) road design, construction, and maintenance practices; and (3) the architecture and implementation of intelligent transportation system technologies, pursuant to section 1914 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).

DATES: The second meeting of the MAC–FHWA is scheduled for May 9–10, 2007, from 10 a.m. until 5 p.m. on May 9 and from 9 a.m. until 1 p.m. on May 10.

ADDRESSES: The second MAC–FHWA meeting will be held at the Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Halladay, the Designated Federal Official, Office of Safety, 202–366–2288, (*michael.halladay@dot.gov*), or Dr. Morris Oliver, Office of Safety, 202–366–2251, (*morris.oliver@dot.gov*), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144). Section 1914 of SAFETEA–LU mandates the establishment of the Motorcyclist Advisory Council as follows: ''The Secretary, acting through the Administrator of the Federal Highway Administration, in consultation with the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate, shall appoint a Motorcyclist Advisory Council to coordinate with and advise the Administrator on infrastructure issues of concern to motorcyclists, including—

(1) Barrier design;

(2) Road design, construction, and maintenance practices; and

(3) The architecture and implementation of intelligent transportation system technologies.''

In addition, section 1914 specifies the membership of the council: ''The Council shall consist of not more than 10 members of the motorcycling community with professional expertise in national motorcyclist safety advocacy, including—

(1) At least—

(A) One member recommended by a national motorcyclist association;

(B) One member recommended by a national motorcycle riders foundation;

(C) One representative of the National Association of State Motorcycle Safety Administrators;

(D) Two members of State motorcyclists' organizations;

(E) One member recommended by a national organization that represents the builders of highway infrastructure;

(F) One member recommended by a national association that represents the traffic safety systems industry; and

(G) One member of a national safety organization; and

(2) At least one, and not more than two, motorcyclists who are traffic system design engineers or State transportation department officials.''

To carry out this requirement, the FHWA published a notice of intent to form an advisory committee in the **Federal Register** on December 23, 2005 (70 FR 76353). This notice, consistent with the requirements of the Federal Advisory Committee Act (FACA), announced the establishment of the Council and invited comments and nominations for membership. The FHWA announced the ten members selected to the Council in the **Federal Register** on October 5, 2006 (71 FR 58903). An electronic copy of this document and the previous **Federal Register** notices associated with the MAC–FHWA can be downloaded through the Document Management System (DMS) at: *http://dms.dot.gov/submit* and the Office of the Federal Register's home page at: *http://www.archives.gov/federal_register*.

The FHWA anticipates that the MAC–FHWA will meet at least once a year, with meetings held in the Washington, DC, area and the FHWA will publish notices in the **Federal Register** to announce the times, dates, and locations of these meetings. Meetings of the Council are open to the public and time will be provided in each meeting's schedule for comments by members of the public. Attendance will necessarily be limited by the size of the meeting room. Members of the public may present oral or written comments at the meeting or may present written materials by providing copies to Ms. Fran Bents, Westat, 1650 Research Boulevard, Rockville, MD 20850–3195, (240) 314–7557, ten (10) days prior to the meeting.

The agenda topics for the meetings will include a discussion of the following issues: (1) Barrier design; (2) road design, construction, and maintenance practices; and (3) the architecture and implementation of intelligent transportation system technologies.

Conclusion

The second meeting of the Motorcyclist Advisory Council to the Federal Highway Administration will be held on May 9–10, at the Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202 from 10 a.m. until 5 p.m. on May 9 and from 9 a.m. until 1 p.m. on May 10.

(Authority: Section 1914 of Pub. L. 109–59; Pub. L. 92–463, 5 U.S.C., App. II § 1.)

Issued on: April 20, 2007.

James D. Ray,

Acting Deputy Administrator.

[FR Doc. 07–2056 Filed 4–24–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–27873]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ASHLANA.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2007–27873 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 25, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–27873. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ASHLANA is:

Intended Use: ''Charter.''

Geographic Region: Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Dated: April 11, 2007.

By order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E7–7690 Filed 4–24–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–27872]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PANTHALASSA.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2007–27872 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 25, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–27872. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant, the intended service of the vessel PANTHALASSA is:

Intended Use: ''Carrying passengers.''

Geographic Region: Navigable waters of ME, NH, MA, RI, CT, NY, NJ, PA, DE, MD, VA, NC, SC, GA, FL, AL, MS, LA, TX, CA.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Dated: April 11, 2007.

By order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E7–7687 Filed 4–24–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–27874]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SWEETEST THING.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2007–27874 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and

the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 25, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–27874. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SWEETEST THING is:

Intended Use: ''(1) Coaching sessions for women powerboaters who want to gain extra experience with navigation and docking. (2) Day trips from Orcas Island to smaller outer islands in the San Juan and Canadian Gulf Islands.''

Geographic Region: Orcas Island in the San Juan Islands of Washington State.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Dated: April 11, 2007.

By order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E7–7685 Filed 4–24–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0138]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a claimant's appropriate rate of pension.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 25, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0138'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Details of Expenses, VA Form 21–8049.

OMB Control Number: 2900–0138.

Type of Review: Extension of a currently approved collection.

Abstract: VA will use the data collected on VA Form 21–8049 to determine the amounts of any deductible expenses paid by the claimant and/or commercial life insurance received in order to calculate the current rate of pension. Pension is an income-based program, and the payable rate depends on the claimant's annual income.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,700 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 22,800.

Dated: April 12, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–7843 Filed 4–24–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0265]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved

collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine an applicant's entitlement to counseling services.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 25, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0265'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Counseling, VA Form 28–8832.

OMB Control Number: 2900–0265.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 28–8832 to apply for counseling services. VA provides personal counseling as well as counseling in training and career opportunities. The information collected will be used to determine the claimant's eligibility for counseling.

Affected Public: Individuals or households.

Estimated Annual Burden: 425 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 5,100.

Dated: April 12, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–7845 Filed 4–24–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0003]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a deceased veteran's eligibility for burial benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 25, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0003'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Burial Benefits (Under 38 U.S.C. Chapter 23), VA Form 21–530.

OMB Control Number: 2900–0003.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 21–530 to apply for burial benefits, including transportation for deceased veterans. VA will use the information collected to determine the veteran's eligibility for burial benefits.

Affected Public: Individuals or households and Businesses or other for profit.

Estimated Annual Burden: 100,000 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 300,000.

Dated: April 12, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–7848 Filed 4–24–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0041]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine whether dwellings under construction comply with standards prescribed for specially adapted housing grant disbursement.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 25, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0041'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Compliance Inspection Report, VA Form 26–1839.

OMB Control Number: 2900–0041.

Type of Review: Extension of a currently approved collection.

Abstract: Fee-compliance inspectors complete VA Form 26–1839 during their inspection on properties under construction. The inspections provide a level of protection to veterans by assuring them and VA that the adaptation are in compliance with the plans and specifications for which a specially adapted housing grant is based.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,575 hour.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,300.

Dated: April 12, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–7851 Filed 4–24–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0652]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine eligibility for aid and attendance for claimants who are patients in nursing home.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 25, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0652'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Nursing Home Information in Connection with Claim for Aid and Attendance, VA Form 21–0779.

OMB Control Number: 2900–0652.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected on VA Form 21–0779 is used to determine veterans residing in nursing homes eligibility for pension and aid and attendance. Parents and surviving spouses entitled to service-connected death benefits and spouses of living veterans receiving service connected compensation at 30 percent or higher are also entitled to aid and attendance based on status as nursing home patients.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 8,333 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 50,000.

Dated: April 12, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–7852 Filed 4–24–07; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
April 25, 2007

Part II

Environmental Protection Agency

40 CFR Part 51

Clean Air Fine Particle Implementation Rule; Final Rule

Agency Information Collection Activities: Proposed Collection; Comment Request; $PM_{2.5}$ Ozone National Ambient Air Quality Standard Implementation Rule; EPA ICR No. 2258.01; Notice

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2003–0062; FRL–8295–2]

RIN 2060–AK74

Clean Air Fine Particle Implementation Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final action provides rules and guidance on the Clean Air Act (CAA) requirements for State and Tribal plans to implement the 1997 fine particle ($PM_{2.5}$) national ambient air quality standards (NAAQS). Fine particles and precursor pollutants are emitted by a wide range of sources, including power plants, cars, trucks, industrial sources, and other burning or combustion-related activities. Health effects that have been associated with exposure to $PM_{2.5}$ include premature death, aggravation of heart and lung disease, and asthma attacks. Those particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children.

Air quality designations became effective on April 5, 2005 for 39 areas (with a total population of 90 million) that were not attaining the 1997 $PM_{2.5}$ standards. By April 5, 2008, each State having a nonattainment area must submit to EPA an attainment demonstration and adopted regulations ensuring that the area will attain the standards as expeditiously as practicable, but no later than 2015. This rule and preamble describe the requirements that States and Tribes must meet in their implementation plans for attainment of the 1997 fine particle NAAQS. (Note that this rule does not include final $PM_{2.5}$ requirements for the new source review (NSR) program; the final NSR rule will be issued at a later date.)

DATES: This rule is effective on May 29, 2007.

ADDRESSES: The EPA has established a docket for this action under Docket ID EPA–HQ–OAR–2003–0062. All documents relevant to this action are listed in the Federal docket management system at *www.regulations.gov*. Although listed in the index, some information is not publicly available (e.g. Confidential Business Information or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy format at the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566–1742. A variety of information and materials related to the fine particle NAAQS and implementation program are also available on EPA's Web site: *http://www.epa.gov/air/particles*.

FOR FURTHER INFORMATION CONTACT: For general information, contact Mr. Richard Damberg, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Code C539–01, Research Triangle Park, NC 27711, phone number (919) 54l–5592 or by e-mail at: *damberg.rich@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

A. Does this action apply to me?

Entities potentially regulated by this action are State and local air quality agencies.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this final rule will be posted at *http://www.epa.gov/particles/actions.html*.

C. How is the preamble organized?

I. Background

Fine particles in the atmosphere are comprised of a complex mixture of components. Common constituents include: sulfate (SO_4); nitrate (NO_3); ammonium; elemental carbon; a great variety of organic compounds; and inorganic material (including metals, dust, sea salt, and other trace elements) generally referred to as ''crustal'' material, although it may contain material from other sources. Airborne particles generally less than or equal to 2.5 micrometers in diameter are considered to be ''fine particles'' (also referred to as $PM_{2.5}$). (A micrometer is one-millionth of a meter, and 2.5 micrometers is less than one-seventh the average width of a human hair.) ''Primary'' particles are emitted directly into the air as a solid or liquid particle (e.g., elemental carbon from diesel engines or fire activities, or condensable organic particles from gasoline engines). ''Secondary'' particles (e.g., sulfate and nitrate) form in the atmosphere as a result of various chemical reactions. (Section II of the proposed rule included detailed technical discussion on $PM_{2.5}$, its precursors, formation processes, and emissions sources.)

The EPA established air quality standards for $PM_{2.5}$ based on evidence from numerous health studies demonstrating that serious health effects are associated with exposures to elevated levels of $PM_{2.5}$. Epidemiological studies have shown statistically significant correlations between elevated $PM_{2.5}$ levels and premature mortality. Other important

effects associated with $PM_{2.5}$ exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), changes in lung function and increased respiratory symptoms, as well as new evidence for more subtle indicators of cardiovascular health. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children.

On July 18, 1997, we revised the NAAQS for particulate matter (PM) to add new standards for fine particles, using $PM_{2.5}$ as the indicator. We established health-based (primary) annual and 24-hour standards for $PM_{2.5}$ (62 FR 38652).[1] The annual standard was set at a level of 15 micrograms per cubic meter, as determined by the 3-year average of annual mean $PM_{2.5}$ concentrations. The 24-hour standard was set at a level of 65 micrograms per cubic meter, as determined by the 3-year average of the 98th percentile of 24-hour concentrations.

Attainment of the 1997 $PM_{2.5}$ standards is estimated to lead to reductions in health impacts, including tens of thousands fewer premature deaths each year, thousands fewer hospital admissions and emergency room visits each year, hundreds of thousands fewer absences from work and school, and hundreds of thousands fewer respiratory illnesses in children annually. The EPA's evaluation of the science concluded that there was not sufficient information to either support or refute the existence of a threshold for health effects from PM exposure.[2]

We subsequently completed in October 2006 another review of the NAAQS for PM. With regard to the primary standards, the 24-hour $PM_{2.5}$ standard was strengthened to a level of 35 micrograms per cubic meter, based on the 3-year average of the 98th percentile of 24-hour concentrations, and the level of the annual standard remained unchanged.[3] Attainment of the 2006 $PM_{2.5}$ standards is estimated to lead to additional reductions in health impacts, including approximately 1,200 to 13,000 fewer premature deaths each year, 1,630 fewer hospital admissions and 1,200 fewer emergency room visits for asthma each year, 350,000 fewer absences from work and school, and 155,300 fewer respiratory illnesses in children annually.[4]

In both 1997 and 2006 EPA established welfare-based (secondary) standards identical to the levels of the primary standards. The secondary standards are designed to protect against major environmental effects of $PM_{2.5}$ such as visibility impairment, soiling, and materials damage. The EPA also established the regional haze regulations in 1999 for the improvement of visual air quality in national parks and wilderness areas across the country. Because regional haze is caused primarily by light scattering and light absorption by fine particles in the atmosphere, EPA is encouraging the States to integrate their efforts to attain the $PM_{2.5}$ standards with those efforts to establish reasonable progress goals and associated emission reduction strategies for the purposes of improving air quality in our treasured natural areas under the regional haze program.

The scientific assessments used in the development of the $PM_{2.5}$ standards included a scientific peer review and public comment process. We developed scientific background documents based on the review of hundreds of peer-reviewed scientific studies. The Clean Air Scientific Advisory Committee, a congressionally mandated group of independent scientific and technical experts, provided extensive review of these assessments, and found that EPA's review of the science provided an adequate basis for the EPA Administrator to make a decision. More detailed information on health effects of $PM_{2.5}$ can be found on EPA's Web site at: *http://www.epa.gov/air/urbanair/pm/index.html*. Additional information on EPA's scientific assessment documents supporting the 1997 standards are available at *http://www.epa.gov/ttn/oarpg/t1cd.html*; additional scientific assessment information on the 2006 standards is available at: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_cr_cd.html.*

The EPA issued final $PM_{2.5}$ designations for areas violating the 1997 standards on December 17, 2004. They were published in the **Federal Register** on January 5, 2005 (70 FR 944). On April 5, 2005, EPA issued a supplemental notice which changed the designation status of eight areas from nonattainment to attainment based on newly updated 2002–2004 air quality data (70 FR 19844; published in the **Federal Register** on April 14, 2005). A total of 39 areas were designated as nonattainment for the 1997 $PM_{2.5}$ standards. The population of these areas is estimated at about 90 million (or more than 30% of the U.S. population). Most of these areas only violate the annual standard, but a few violate both the annual and 24-hour standards.

The nonattainment designation for an area starts the process whereby a State or Tribe must develop an implementation plan that includes, among other things, a demonstration showing how it will attain the ambient standards by the attainment dates required in the CAA. Under section 172(b), States have up to 3 years after EPA's final designations to submit their SIPs to EPA. These SIPs will be due on April 5, 2008, 3 years from the effective date of the designations.

Section 172(a)(2) of the Act requires States to attain the standards as expeditiously as practicable but within 5 years of designation (i.e. attainment date of April 2010 based on air quality data for 2007–2009), or within up to 10 years of designation (i.e. to April 2015) if the EPA Administrator extends an area's attainment date by 1–5 years based upon the severity of the nonattainment problem or the feasibility of implementing control measures.

Virtually all nonattainment problems appear to result from a combination of local emissions and transported emissions from upwind areas. The structure of the CAA requires EPA to develop national rules for certain types of sources which are also significant contributors to local air quality problems, including motor vehicles and fuels. It also provides for States to address emissions sources on an area-specific basis through such requirements as RACT, RACM, and RFP.

We believe that to attain the $PM_{2.5}$ standards, it is important to pursue emissions reductions simultaneously on the local, regional, and national levels. The EPA issued the Clean Air Interstate

[1] The original annual and daily standards for particles generally less than or equal to 10 micrometers in diameter (also referred to as PM_{10}) were established in 1987. In the 1997 PM NAAQS revision, EPA also revised the standards for PM_{10}, but these revised PM_{10} standards were later vacated by the court, and the 1987 PM_{10} standards remained in effect. In the 2006 NAAQS revision, the 24-hour PM_{10} standard was retained but the annual standard was revoked. Today's implementation rule and guidance does not address PM_{10}.

[2] Environmental Protection Agency. (2004a). Air Quality Criteria for Particulate Matter. Research Triangle Park, NC: National Center for Environmental Assessment—RTP, Office of Research and Development, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; report no. EPA/600/P–99/002aF and EPA/600/P–99/002bF. October 2004.

[3] The revised fine particle NAAQS were published on October 17, 2006 (71 FR 61144). See EPA's Web site for additional information: *http://www.epa.gov/pm/index.html.*

[4] Regulatory Impact Analysis for Particulate Matter National Ambient Air Quality Standards (September 2006), page ES–8. The mortality range includes estimates based on the results of an expert elicitation study, along with published epidemiological studies.

Rule (CAIR)[5] on March 10, 2005 to address the interstate transport of sulfur dioxide and nitrogen oxide emissions primarily from power plants. Section 110 gives EPA the authority to require SIPs to ''prohibit * * * any source or other type of emission activity within the State from emitting any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to'' any NAAQS, and to prohibit sources or emission activities from emitting pollutants in amounts which will interfere with measures required to be included in State plans to prevent significant deterioration of air quality or to protect visibility (such as the protection of 156 mandatory Federal class I areas under the regional haze rule[6]). CAIR employs the same emissions trading approach used to achieve cost-effective emission reductions under the acid rain program. It outlines a two-phase program with increasingly tighter power plant emissions caps for 28 eastern states and the District of Columbia: SO_2 caps of 3.6 million tons in 2010, and 2.5 million in 2015; NO_X caps of 1.5 in 2009 and 1.3 in 2015; and NO_X ozone season caps of 580,000 tons in 2009 and 480,000 tons in 2015. Emission caps are divided into State SO_2 and NO_X budgets. By the year 2015, the Clean Air Interstate Rule is estimated to result in:

—$85 to $100 billion in annual health benefits, including preventing 17,000 premature deaths, millions of lost work and school days, and tens of thousands of non-fatal heart attacks and hospital admissions annually.
—Nearly $2 billion in annual visibility benefits in southeastern national parks, such as Great Smoky and Shenandoah.
—Significant regional reductions in sulfur and nitrogen deposition, reducing the number of acidic lakes and streams in the eastern U.S.

Over the past several years, EPA has also issued a number of regulations addressing emissions standards for new cars, trucks and buses. These standards are providing reductions in motor vehicle emissions of volatile organic compounds (VOCs, also referred to as hydrocarbons), NO_X, and direct PM emissions (such as elemental carbon) as older vehicles are retired and replaced. Other existing rules are designed to reduce emissions from several categories of nonroad engines. The Tier 2 motor vehicle emission standards, together with the associated requirements to reduce sulfur in gasoline, are estimated to provide additional benefits nationally beginning in 2004.[7] When the new tailpipe and sulfur standards are fully implemented, Americans are estimated to benefit from the clean-air equivalent of removing 164 million cars from the road. These new standards require passenger vehicles to have emissions 77 to 95 percent cleaner than those on the road today and require fuel manufacturers to reduce the sulfur content of gasoline by up to 90 percent. In addition, the 2001 heavy-duty diesel engine regulations[8] will lead to continued emissions reductions as older vehicles in that engine class are retired and fleets turn over. New emission standards began to take effect for model year 2007 and apply to heavy-duty highway engines and vehicles. These standards are based on the use of high-efficiency catalytic exhaust emission control devices or comparably effective advanced technologies. Because these devices are damaged by sulfur, the level of sulfur in highway diesel fuel was to be reduced by 97 percent by mid-2006. We project a 2.6 million ton reduction of NO_X emissions in 2030 when the current heavy-duty vehicle fleet is completely replaced with newer heavy-duty vehicles that comply with these emission standards. By 2030, we estimate that this program will reduce annual emissions of hydrocarbons by 115,000 tons and PM by 109,000 tons. These emissions reductions are on par with those that we anticipate from new passenger vehicles and low sulfur gasoline under the Tier 2 program.

The EPA also finalized national rules in May 2004 to reduce significantly $PM_{2.5}$ and NO_X emissions from nonroad diesel-powered equipment.[9] These nonroad sources include construction, agricultural, and industrial equipment, and their emissions constitute an important fraction of the inventory for direct $PM_{2.5}$ emissions (such as elemental carbon and organic carbon), and NO_X. The EPA estimates that affected nonroad diesel engines currently account for about 44 percent of total diesel PM emissions and about 12 percent of total NO_X emissions from mobile sources nationwide. These proportions are even higher in some urban areas. The diesel emission standards will reduce emissions from this category by more than 90 percent, and are similar to the onroad engine requirements implemented for highway trucks and buses. Because the emission control devices can be damaged by sulfur, EPA also established requirements to reduce the allowable level of sulfur in nonroad diesel fuel by more than 99 percent by 2010. In 2030, when the full inventory of older nonroad engines has been replaced, the nonroad diesel program will annually prevent up to 12,000 premature deaths, one million lost work days, 15,000 heart attacks and 6,000 children's asthma-related emergency room visits.

The EPA expects the implementation of regional and national emission reduction programs such as CAIR and the suite of mobile source rules described above to provide significant air quality improvements for $PM_{2.5}$ nonattainment areas. At the same time, analyses for the final CAIR rule indicate that without implementation of local measures, a number of $PM_{2.5}$ areas are projected to remain in nonattainment status in the 2010–2015 timeframe. Thus, EPA believes that local and State emission reduction efforts will need to play an important role in addressing the $PM_{2.5}$ problem as well. The EPA will work closely with States, Tribes, and local governments to develop appropriate in-state pollution reduction measures to complement regional and national strategies to meet the standards expeditiously and in a cost-effective manner. States will need to evaluate technically and economically feasible emission reduction opportunities and determine which measures can be reasonably implemented in the near term. Local and regional emission reduction efforts should proceed concurrently and expeditiously.

The promulgation of a revised 24-hour $PM_{2.5}$ standard effective on December 18, 2006 has initiated another process of State recommendations, and the eventual designation by EPA of areas not attaining the revised standard. The additional designations are to be completed within two years from the effective date, although EPA may take an additional year to complete the designations if it determines it does not have sufficient information. State plans to attain the 24-hour standard would then be due within three years of the final designations. A number of areas, including some that are already designated as not attaining the 1997 standards, may be exceeding the revised 24-hour standard. The EPA encourages State and local governments to be mindful of the strengthened 24-hour standard as they adopt emission reduction strategies to attain the 1997 standards. Such steps may help with

[5] See *http://www.epa.gov/cair.*

[6] See 64 FR 35714, July 1, 1999.

[7] See Tier II emission standards at 65 FR 6698, February 10, 2000.

[8] See heavy-duty diesel engine regulations at 66 FR 5002, January 18, 2001.

[9] For more information on the proposed nonroad diesel engine standards, see EPA's Web site: *http://www.epa.gov/nonroad/.*

future attainment efforts, or even help some areas avoid a nonattainment designation for the 24-hour standard in the first place.

The public health benefits of meeting the $PM_{2.5}$ standards are estimated to be significant. Even small reductions in $PM_{2.5}$ levels may have substantial health benefits on a population level. For example, in a moderate-sized metropolitan area with a design value of 15.5 µg/m3, efforts to improve annual average air quality down to the level of the standard (15.0 µg/m3) are estimated to result in as many as 25–50 fewer mortalities per year due to air pollution exposure. In a smaller city, the same air quality improvement from 15.5 to 15.0 µg/m3 still are estimated to result in a number of avoided mortalities per year. These estimates are based on EPA's standard methodology for calculating health benefits as used in recent rulemakings.[10] In addition, because many different precursors contribute to the formation of fine particles, reductions in pollutants that contribute to $PM_{2.5}$ also can provide concurrent benefits in addressing a number of other air quality problems—such as ground-level ozone, regional haze, toxic air pollutants, and urban visibility impairment.

In order to assist States in developing effective plans to address the local component of the $PM_{2.5}$ nonattainment problem, EPA is issuing this final fine particle implementation rule. The EPA is issuing this rule to implement the 1997 $PM_{2.5}$ NAAQS in accordance with the statutory requirements of the CAA set forth in Subpart 1 of Part D of Title 1, *i.e.*, sections 171–179B of the Act. The EPA believes that the CAA directs the Agency to implement new or revised NAAQS in nonattainment areas solely in accordance with Subpart 1, unless another Subpart of the Act also applies to the particular NAAQS at issue. In this case, EPA has concluded that Congress did not intend the Agency to implement particulate matter NAAQS other than those using PM_{10} as the indicator in accordance with Subpart 4 of Part D of Title 1, *i.e.*, sections 188–190 of the CAA. Moreover, EPA believes that implementation of the $PM_{2.5}$ NAAQS under the provisions of Subpart 1 is more appropriate, given the inherent nature of the $PM_{2.5}$ nonattainment problem. In contrast to PM_{10}, EPA anticipates that achieving the NAAQS for $PM_{2.5}$ will generally require States to evaluate different sources for controls, to consider controls of one or more precursors in addition to direct PM emissions, and to adopt different control strategies. As a result, EPA has concluded that the provisions of Subpart 1 will allow States and EPA to tailor attainment plans so that they can be based more specifically upon the facts and circumstances of each nonattainment area.

The proposed clean air fine particle implementation rule was issued on November 1, 2005 (70 FR 65984). About 100 comments were received from private citizens and parties representing industry, state and local governments, environmental groups, and federal agencies. Section II of this document describes the primary elements of the fine particle implementation program. Each section summarizes the relevant policies and options discussed in the proposed rule, discusses the final policy set forth by EPA in the final rule, and provides responses to the major comments received on each issue.

II. Elements of the Clean Air Fine Particle Implementation Rule

A. Precursors and Pollutants Contributing to Fine Particle Formation

1. Introduction

The main precursor gases associated with fine particle formation are SO_2, NO_X, volatile organic compounds (VOC), and ammonia. This section provides technical background on each precursor, discusses the policy approach for addressing each precursor under the $PM_{2.5}$ implementation program, and responds to key issues raised in the public comment process. A subsection is also included on direct $PM_{2.5}$ emissions to address key comments received on this issue as well.

Gas-phase precursors SO_2, NO_X, VOC, and ammonia undergo chemical reactions in the atmosphere to form secondary particulate matter. Formation of secondary PM depends on numerous factors including the concentrations of precursors; the concentrations of other gaseous reactive species; atmospheric conditions including solar radiation, temperature, and relative humidity (RH); and the interactions of precursors with preexisting particles and with cloud or fog droplets. Several atmospheric aerosol species, such as ammonium nitrate and certain organic compounds, are semivolatile and are found in both gas and particle phases. Given the complexity of PM formation processes, new information from the scientific community continues to emerge to improve our understanding of the relationship between sources of PM precursors and secondary particle formation.

As an initial matter, it is helpful to clarify the terminology we use throughout this notice to discuss precursors. We recognize NO_X, SO_2, VOCs, and ammonia as precursors of $PM_{2.5}$ in the scientific sense because these pollutants can contribute to the formation of $PM_{2.5}$ in the ambient air. In section II.K on emission inventory issues, we make the point that because of the complex and variable interaction of multiple pollutants and precursors in the formation of fine particles, it is important for States and EPA to continue to characterize and improve the emissions inventories for all $PM_{2.5}$ precursors. The States and EPA need to use the best available information available in conducting air quality modeling and other assessments. At the same time, the refinement of emissions inventories, the overall contribution of different fine particle precursors to $PM_{2.5}$ formation, and the efficacy of alternative potential control measures will vary by location. This requires that we further consider in this action how States should address these $PM_{2.5}$ precursors in their $PM_{2.5}$ attainment plan programs. Thus, we require emission inventories to include the best available information on all pollutants and precursors that contribute to $PM_{2.5}$ concentrations, and at same time we use the term ''$PM_{2.5}$ attainment plan precursor'' to describe only those precursors that are required to be evaluated for control strategies in a specific $PM_{2.5}$ nonattainment area or maintenance area plan.

In this rule, EPA has not made a finding that all precursors should be evaluated for possible controls in each specific nonattainment area. The policy approach in the rule instead requires sulfur dioxide to be evaluated for control measures in all areas, and describes general presumptive policies for NO_X, ammonia, and VOC for all nonattainment areas. The rule provides a mechanism by which the State and/or EPA can make an area-specific demonstration to reverse the general presumption for these three precursors. States must also consider any relevant information brought forward by interested parties in the SIP planning and development process. (See section II.A.8 for additional discussion on these issues.)

In the following sections, we discuss how States must evaluate $PM_{2.5}$ precursors for nonattainment program issues in $PM_{2.5}$ implementation plans,

[10] See: U.S. EPA 2006. Regulatory Impact Analysis for the Particulate Matter National Ambient Air Quality Standards. Air Benefits and Cost Group, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. October 6, 2006. Appendix A provides an analysis of estimated benefits and costs of attaining the 1997 PM NAAQS standards in 2015.

including issues such as RACT, RACM, and reasonable further progress. This discussion in the final rule is linked to precursor policies for the implementation of the new source review program, the transportation conformity program, the general conformity program, and the regional haze program. All of these programs take effect prior to approval of SIPs for attaining the $PM_{2.5}$ NAAQS. In the case of NSR, the program applies on the effective date of the nonattainment area designation. In the case of transportation conformity and general conformity, the program takes effect 1 year from the effective date of designation of the nonattainment area (i.e., April 5, 2006 for areas designated nonattainment effective April 5, 2005). Thus, for each of these programs there is an interim period between the date the program becomes applicable to a given nonattainment area and the date the State receives EPA approval of its overall $PM_{2.5}$ implementation plan.

2. Legal Authority to Regulate Precursors

a. Background

The CAA authorizes the Agency to regulate criteria pollutant precursors. The term ''air pollutant'' is defined in section 302(g) to include ''any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used.'' The first clause of this second sentence in section 302(g) explicitly authorizes the Administrator to identify and regulate precursors as air pollutants under other parts of the CAA. In addition, the second clause of the sentence indicates that the Administrator has discretion to identify which pollutants should be classified as precursors for particular regulatory purposes. Thus, we do not necessarily construe the CAA to require that EPA identify a particular precursor as an air pollutant for all regulatory purposes where it can be demonstrated that various CAA programs address different aspects of the air pollutant problem. Likewise, we do not interpret the CAA to require that EPA treat all precursors of a particular pollutant the same under any one program when there is a basis to distinguish between such precursors. For example, in a rule addressing $PM_{2.5}$ precursors for purposes of the transportation conformity program, we chose to adopt a different approach for one precursor based on the limited emissions of that precursor from onroad mobile sources and the degree to which it contributes to $PM_{2.5}$ concentrations. (70 FR 24280; May 6, 2005).

Other provisions of the CAA reinforce our reading of section 302(g) that Congress intended precursors to NAAQS pollutants to be subject to the air quality planning and control requirements of the CAA, but also recognized that there may be circumstances where it is not appropriate to subject precursors to certain requirements of the CAA. Section 182 of the CAA provides for the regulation of NO_X and VOCs as precursors to ozone in ozone nonattainment areas, but also provides in section 182(f) that major stationary sources of NO_X (an ozone precursor) are not subject to emission reductions controls for ozone where the State shows through modeling that NO_X reductions do not decrease ozone. Section 189(e) provides for the regulation of PM_{10} precursors in PM_{10} nonattainment areas, but also recognizes that there may be certain circumstances (e.g. if precursor emission sources do not significantly contribute to PM_{10} levels) where it is not appropriate to apply control requirements to PM_{10} precursors. The legislative history of Section 189(e) recognized the complexity behind the science of precursor transformation into PM_{10} ambient concentrations and the need to harmonize the regulation of PM_{10} precursors with other provisions of the CAA:

> The Committee notes that some of these precursors may well be controlled under other provisions of the CAA. The Committee intends that * * * the Administrator will develop models, mechanisms, and other methodology to assess the significance of the PM_{10} precursors in improving air quality and reducing PM_{10}. Additionally, the Administrator should consider the impact on ozone levels of PM_{10} precursor controls. The Committee expects the Administrator to harmonize the PM_{10} reduction objective of this section with other applicable regulations of this CAA regarding PM_{10} precursors, such as NO_X. See H. Rpt. 101–490, Pt. 1, at 268 (May 17, 1990), reprinted in S. Prt. 103–38, Vol. II, at 3292.

In summary, section 302(g) of the CAA clearly calls for the regulation of precursor pollutants, but the CAA also identifies circumstances when it may not be appropriate to regulate precursors and gives the Administrator discretion to determine how to address particular precursors under various programs required by the CAA. Due to the complexities associated with precursor emissions and their variability from location to location, we believe that in certain situations it may not be effective or appropriate to control a certain precursor under a particular regulatory program or for EPA to require similar control of a particular precursor in all areas of the country.

b. Final Rule

The final rule maintains the same legal basis for regulating precursors as was described in the proposal and in the background section above. We also include a clarification of the term ''significant contributor.''

In the proposal, when considering the impacts of the precursors NO_X, VOC and ammonia on ambient concentrations of particulate matter, we referred to the possibility of reversing the presumed approach for regulating or not regulating a precursor if it can be shown that the precursor in question is or is not a ''significant contributor'' to $PM_{2.5}$ concentrations within the specific nonattainment area. ''Significant contribution'' in this context is a different concept than that in Section 110(a)(2)(D). Section 110(a)(2)(D) prohibits States from emitting air pollutants in amounts which significantly contribute to nonattainment or other air quality problems in other states. Consistent with the discussion of sections 189(e) and 302(g) above, we are clarifying that the use in this implementation rule of the term ''significant contribution'' to the nonattainment area's $PM_{2.5}$ concentration means that a significant change in emissions of the precursor from sources in the state would be projected to provide a significant change in $PM_{2.5}$ concentrations in the nonattainment area. For example, if modeling indicates that a reduction in a state's NO_X emissions would reduce ambient $PM_{2.5}$ levels in the nonattainment area, but that a reduction in ammonia emissions would result in virtually no change in ambient $PM_{2.5}$ levels, this would suggest that NO_X is a significant contributor but that ammonia is not. The EPA in this rule is not establishing a quantitative test for determining whether $PM_{2.5}$ levels in a nonattainment area change significantly in response to reductions in precursor emissions in a state. However, in considering this question, it is relevant to consider that relatively small reductions in $PM_{2.5}$ levels are estimated to result in worthwhile public health benefits.

This approach to identifying a precursor for regulation reflects atmospheric chemistry conditions in the area and the magnitude of emissions of the precursor in the area or State. Assessments of which source categories are more cost effective or technically feasible to control should be part of the later RACT and RACM assessment, to

occur after the basic assessment of which precursors are to be regulated is completed.

In the proposed regulatory text, the provisions for reversing presumptions for NO_X, VOC and ammonia included consideration of whether the precursor would significantly contribute to ''other downwind air quality concerns.'' In the final rule we have removed that language to clarify that identification of attainment plan precursors involves evaluation of the impact on $PM_{2.5}$ levels in a nonattainment area of precursor emissions from sources within the state(s) where the nonattainment area is located. Other parts of the Act, notably section 110(a)(2)(D) and section 126, focus on interstate transport of pollutants.

c. Comments and Responses

Comment: The EPA received several comments supporting EPA's interpretation of 302(g) to determine the appropriate regulatory status of each precursor pollutant.

Response: The EPA agrees with the commenters. In establishing section 302(g), Congress intended that precursors to NAAQS pollutants be subject to the air quality planning and control requirements of the CAA. However, the CAA also recognizes that there may be circumstances where it is not appropriate to subject precursors to certain requirements of the CAA.

Comment: The EPA received several comments regarding the applicability of section 189(e), noting that it requires states to presumptively control sources of PM_{10} precursors except where the EPA ''determines that such sources [of precursors] do not significantly contribute to PM_{10} levels which exceed the standard in the area.'' Several commenters stated that EPA does not have the legal authority to regulate $PM_{2.5}$ precursors in a different manner. Several commenters maintained that all $PM_{2.5}$ precursors presumptively should be subject to regulation unless demonstrated by the State as not a significant contributor to $PM_{2.5}$ concentrations in a specific area.

Response: As stated above, EPA believes that section 302(g) allows the Administrator to presumptively not require certain precursors to be addressed in $PM_{2.5}$ implementation plans generally, while allowing the State or EPA to make a finding for a specific area to override the general presumption. In the following pollutant-specific sections of this preamble, EPA finds that at this time there is sufficient uncertainty regarding whether certain precursors significantly contribute to $PM_{2.5}$ concentrations in all nonattainment areas such that the policy set forth in this rule does not presumptively require certain precursors (ammonia, VOC) to be controlled in each area. However, the State or EPA may reverse the presumption and regulate a precursor if it provides a demonstration showing that the precursor is a significant contributor to $PM_{2.5}$ concentrations in the area. In addition, if in the State's SIP planning and adoption process a commenter provides additional information suggesting an alternative policy for regulating a particular precursor, the State will need to respond to this information in its rulemaking action.

3. Policy for Ammonia

[Section II.E.2 of November 1, 2005 proposed rule (70 FR 65999); sec. 51.1002 in draft and final regulatory text.]

a. Background

Ammonia (NH_3) is a gaseous pollutant that is emitted by natural and anthropogenic sources. Emissions inventories for ammonia are considered to be among the most uncertain of any species related to PM. Ammonia serves an important role in neutralizing acids in clouds, precipitation and particles. In particular, ammonia neutralizes sulfuric acid and nitric acid, the two key contributors to acid deposition (acid rain). Deposited ammonia also can contribute to problems of eutrophication in water bodies, and deposition of ammonium particles may effectively result in acidification of soil as ammonia is taken up by plants. The NARSTO Fine Particle Assessment [11] indicates that reducing ammonia emissions where sulfate concentrations are high may reduce $PM_{2.5}$ mass concentrations, but may also increase the acidity of particles and precipitation. An increase in particle acidity is suspected to be linked with human health effects and with an increase in the formation of secondary organic compounds. Based on the above information and further insights gained from the NARSTO Fine Particle Assessment, it is apparent that the formation of particles related to ammonia emissions is a complex, nonlinear process.

Though recent studies have improved our understanding of the role of ammonia in aerosol formation, ongoing research is required to better describe the relationships between ammonia emissions, particulate matter concentrations, and related impacts. The control techniques for ammonia and the analytical tools to quantify the impacts of reducing ammonia emissions on atmospheric aerosol formation are both evolving. Also, area-specific data are needed to evaluate the effectiveness of reducing ammonia emissions on reducing $PM_{2.5}$ concentrations in different areas, and to determine where ammonia decreases may increase the acidity of particles and precipitation.

The proposal showed consideration for the uncertainties about ammonia emissions inventories and about the potential efficacy of ammonia control measures by providing for a case-by-case approach. It was recommended that each State should evaluate whether reducing ammonia emissions would lead to $PM_{2.5}$ reductions in their specific $PM_{2.5}$ nonattainment areas. The proposed policy did not require States to address ammonia as a $PM_{2.5}$ attainment plan precursor, unless a technical demonstration by the State or EPA showed that ammonia emissions from sources in the State significantly contribute to $PM_{2.5}$ concentrations in a given nonattainment area or to other downwind air quality concerns. Where the State or EPA has determined that ammonia is a significant contributor to $PM_{2.5}$ formation in a nonattainment area, the State would be required to evaluate control measures for ammonia emissions in its nonattainment SIP due in 2008, in the implementation of the PM program, and in other associated programs in that area.

b. Final Rule

In the final rule, ammonia is presumed not to be a $PM_{2.5}$ attainment plan precursor, meaning that the State is not required to address ammonia in its attainment plan or evaluate sources of ammonia emissions for reduction measures. This presumption can be reversed based on an acceptable technical demonstration for a particular area by the State or EPA. If a technical demonstration by the State or EPA shows that ammonia emissions from sources in the State significantly contribute to $PM_{2.5}$ concentrations in a given nonattainment area, the State must then evaluate and consider control strategies for reducing ammonia emissions in its nonattainment SIP due in 2008, in the implementation of the $PM_{2.5}$ program. Technical demonstrations on ammonia should also consider the potential for atmospheric and particle acidity to increase with ammonia reductions. Further discussion about technical demonstrations to

[11] NARSTO (2004) (*Particulate Matter Assessment for Policy Makers:* A NARSTO Assessment. P. McMurry, M. Shepherd, and J. Vickery, eds. Cambridge University Press, Cambridge, England. ISBN 0 52 184287 5.

support reversing a $PM_{2.5}$ precursor presumption is included in section II.A.8 below.

This approach was retained from the proposal because of continued uncertainties regarding ammonia emission inventories and the effects of ammonia emission reductions. Ammonia emission inventories are presently very uncertain in most areas, complicating the task of assessing potential impacts of ammonia emissions reductions. In addition, data necessary to understand the atmospheric composition and balance of ammonia and nitric acid in an area are not widely available across $PM_{2.5}$ nonattainment areas, making it difficult to predict the results of potential ammonia emission reductions. Ammonia reductions may be effective and appropriate for reducing $PM_{2.5}$ concentrations in selected locations, but in other locations such reductions may lead to minimal reductions in $PM_{2.5}$ concentrations and increased atmospheric acidity. Research projects continue to expand our collective understanding of these issues, but at this time EPA believes this case-by-case policy approach is appropriate. In light of these uncertainties, we encourage States to continue efforts to better understand the role of ammonia in its fine particle problem areas.

c. Comments and Responses

Comment: One commenter stated that scientific understanding of the complexities of PM formation from ammonia is limited. The commenter claimed that the reduction of ammonia will not reduce PM in many areas, and speciated PM data to investigate the potential decrease in PM from ammonia emissions reductions is not available in all areas.

Response: The final rule takes these uncertainties into consideration by allowing ammonia to be addressed on a case-by-case basis. For any area about which enough information is available to determine that ammonia emission reductions would lead to a beneficial reduction in $PM_{2.5}$, the State can develop a technical demonstration justifying the control of ammonia. If the State chooses to develop such a demonstration, preferably it should be completed as part of the SIP development process and prior to the adoption of control measures, in consultation with the appropriate EPA regional office.

Comment: Some commenters claimed that requiring no action on some precursors is counter to the requirement in sections 172(a)(2) and 188 to attain the NAAQS as expeditiously as practicable. They also asserted that presuming that ammonia is not a $PM_{2.5}$ attainment plan precursor violates 302(g) by improperly delegating authority to the States.

Response: In many areas, reducing ammonia emissions could have little effect on $PM_{2.5}$ concentrations and could lead to the potentially harmful effect of increased atmospheric acidity. While States are not required to take action on ammonia sources under this policy, States would be required to address information on ammonia brought to their attention during the planning and rule adoption process. Under this approach, States should assess whether ammonia reductions would lead to reduced $PM_{2.5}$ concentrations in specific nonattainment areas. If the State decides that ammonia reductions could yield beneficial reductions in $PM_{2.5}$, the State should complete a technical demonstration supporting a reversal of the presumption. The EPA does not believe that this approach improperly delegates authority to the States. It establishes a general presumption for all areas through this rulemaking process, and allows for the presumption to be modified by the State or EPA on a case-by-case basis. EPA still retains the ability to make a technical demonstration for any area if appropriate to reverse the presumption and require ammonia to be addressed in its attainment plan.

Comment: Some commenters stated that the results of a large study on air emissions from concentrated animal feeding operations (CAFOs) should be evaluated before requiring control of ammonia in areas where agriculture is alleged to be a major source.

Response: The $15 million national CAFO consent agreement study coordinated by Purdue University will greatly improve ammonia and VOC emissions inventories and our understanding of the impacts of agricultural emissions on particle formation. The EPA recognizes that the agricultural emissions study is expected to provide data for future planning purposes, and we expect that some of the results of the study will not be available in time to be considered in the development of $PM_{2.5}$ State Implementation Plans dues in April 2008. However, if a State believes it has sufficient technical information to warrant regulation of ammonia emissions in their 2008 implementation plans, it may include in its plan a demonstration to reverse the presumption as well as emission reduction measures. The EPA will review each submittal on a case-by-case basis.

Comment: A presumption to not address ammonia will impede certain states (*i.e.* those that have provisions requiring their regulations to be ''no stricter than Federal'' provisions) from regulating ammonia.

Response: This presumptive approach to ammonia will not restrict States from addressing ammonia in their $PM_{2.5}$ attainment plans. If a State has information indicating that reductions in ammonia emissions would cause beneficial reductions in $PM_{2.5}$ concentrations, the State can make a technical demonstration to reverse the presumption. In such cases, inclusion of ammonia as a $PM_{2.5}$ attainment plan precursor would not be considered stricter than Federal requirements. Under the policy in the final rule, the Federal government or the State may assess the impact of ammonia in a particular area and determine whether the presumption of insignificance is appropriate or whether ammonia is in fact a significant contributor to the $PM_{2.5}$ problem in the area.

4. Policy for VOC

[Section II.E.2 of November 1, 2005 proposed rule (70 FR 65999); sec. 51.1002 in draft and final regulatory text.]

a. Background

The VOC policy in this rule addresses volatile and semivolatile organic compounds, generally up to 24 carbon atoms. High molecular weight organic compounds (typically 25 carbon atoms or more) are emitted directly as primary organic particles and exist primarily in the condensed phase at ambient temperatures. Accordingly, high molecular weight organic compounds are to be regulated as primary $PM_{2.5}$ emissions for the purposes of the $PM_{2.5}$ implementation program.

The organic component of ambient particles is a complex mixture of hundreds or even thousands of organic compounds. These organic compounds are either emitted directly from sources (i.e. primary organic aerosol) or can be formed by reactions in the ambient air (i.e. secondary organic aerosol, or SOA). Volatile organic compounds are key precursors in the formation processes for both SOA and ozone. The relative importance of organic compounds in the formation of secondary organic particles varies from area to area, depending upon local emissions sources, atmospheric chemistry, and season of the year.

The lightest organic molecules (i.e., molecules with six or fewer carbon atoms) occur in the atmosphere mainly as vapors and typically do not directly

form organic particles at ambient temperatures due to the high vapor pressure of their products. However, they participate in atmospheric chemistry processes resulting in the formation of ozone and certain free radical compounds (such as the hydroxyl radical [OH]) which in turn participate in oxidation reactions to form secondary organic aerosols, sulfates, and nitrates. These VOCs include all alkanes with up to six carbon atoms (from methane to hexane isomers), all alkenes with up to six carbon atoms (from ethene to hexene isomers), benzene and many low-molecular weight carbonyls, chlorinated compounds, and oxygenated solvents.

Intermediate weight organic molecules (i.e., compounds with 7 to 24 carbon atoms) often exhibit a range of volatilities and can exist in both the gas and aerosol phase at ambient conditions. For this reason they are also referred to as semivolatile compounds. Semivolatile compounds react in the atmosphere to form secondary organic aerosols. These chemical reactions are accelerated in warmer temperatures, and studies show that SOA typically comprises a higher percentage of carbonaceous PM in the summer as opposed to the winter. The production of SOA from the atmospheric oxidation of a specific VOC depends on four factors: Its atmospheric abundance, its chemical reactivity, the availability of oxidants (O_3, OH, HNO_3), and the volatility of its products. In addition, recent work suggests that the presence of acidic aerosols may lead to an increased rate of SOA formation. Aromatic compounds such as toluene, xylene, and trimethyl benzene are considered to be the most significant anthropogenic SOA precursors and have been estimated to be responsible for 50 to 70 percent of total SOA in some airsheds. Man-made sources of aromatics gases include mobile sources, petrochemical manufacturing and solvents. Some of the biogenic hydrocarbons emitted by trees are also considered to be important precursors of secondary organic particulate matter. Terpenes (and b-pinene, limonene, carene, etc.) and the sesquiterpenes are expected to be major contributors to SOA in areas with significant vegetation cover, but isoprene is not. Terpenes are very prevalent in areas with pine forests, especially in the southeastern U.S. The rest of the anthropogenic hydrocarbons (higher alkanes, paraffins, etc.) have been estimated to contribute 5–20 percent to the SOA concentration depending on the area.

The contribution of the primary and secondary components of organic aerosol to the measured organic aerosol concentrations remains a complex issue. Most of the research performed to date has been done in southern California, and more recently in central California, while fewer studies have been completed on other parts of North America. Many studies suggest that the primary and secondary contributions to total organic aerosol concentrations are highly variable, even on short time scales. Studies of pollution episodes indicate that the contribution of SOA to the organic particulate matter can vary from 20 percent to 80 percent during the same day.

Despite significant advances in understanding the origins and properties of SOA, it remains probably the least understood component of $PM_{2.5}$. The reactions forming secondary organics are complex, and the number of intermediate and final compounds formed is voluminous. Some of the best efforts to unravel the chemical composition of ambient organic aerosol matter have been able to quantify the concentrations of hundreds of organic compounds representing only 10–20 percent of the total organic aerosol mass. For this reason, SOA continues to be a significant topic of research and investigation.

Current scientific and technical information clearly shows that carbonaceous material is a significant fraction of total $PM_{2.5}$ mass in most areas, that certain VOC emissions are precursors to the formation of secondary organic aerosol, and that a considerable fraction of the total carbonaceous material is likely from local as opposed to regional sources. However, while significant progress has been made in understanding the role of gaseous organic material in the formation of organic PM, this relationship remains complex. We recognize that further research and technical tools are needed to better characterize emissions inventories for specific VOC compounds, and to determine the extent of the contribution of specific VOC compounds to organic PM mass.

In light of these factors, the proposed rule did not require States to address VOCs as $PM_{2.5}$ attainment plan precursors and evaluate them for control measures, unless the State or EPA makes a finding that VOCs significantly contribute to a $PM_{2.5}$ nonattainment problem in the State or to other downwind air quality concerns. Many $PM_{2.5}$ nonattainment areas are also nonattainment areas for the 8-hour ozone standard; control measures for VOCs will be implemented in some of these areas, potentially providing a co-benefit for $PM_{2.5}$ concentrations.

b. Final Rule

The final rule maintains the same policy as proposed.[12] States are not required to address VOC in $PM_{2.5}$ implementation plans and evaluate control measures for such pollutants unless the State or EPA makes a technical demonstration that emissions of VOCs from sources in the State significantly contribute to $PM_{2.5}$ concentrations in a given nonattainment area. Technical demonstrations are discussed in section II.A.8 below. If a State chooses to make a technical demonstration, it should be developed in advance of the attainment demonstration.

c. Comments and Responses

Comment: One commenter stated that our understanding of the complexities of $PM_{2.5}$ formation from VOCs is limited, that speciated PM data are not available in all areas, and that VOC reductions will not reduce $PM_{2.5}$ in many areas.

Response: The EPA acknowledges the uncertainties regarding the role of VOC in secondary organic aerosol formation. For this reason the final rule does not presumptively include VOC as a regulated pollutant for PM planning. However, if available data demonstrates that control of VOC would reduce $PM_{2.5}$ concentrations in an area, the State or EPA may include VOC as an attainment plan precursor.

Comment: One commenter stated that the rationale that VOC should not be considered a $PM_{2.5}$ attainment plan precursor because most PM areas are also ozone areas is not appropriate because many ozone areas will attain soon and VOC reductions will still be needed for PM.

Response: The primary rationale for not including VOC as a $PM_{2.5}$ attainment plan precursor in every nonattainment area is the uncertainty regarding the contribution of anthropogenic VOCs to the formation of the organic carbon portion of fine particles. In certain areas, EPA expects that VOC control measures will have some co-benefits in the reduction of fine particulates. However, this reason should not be considered the principal reason for the policy in the final rule that VOCs presumptively should not be considered $PM_{2.5}$ attainment plan precursors. If a State or EPA determines that VOCs do contribute significantly to $PM_{2.5}$ concentrations in an area, the State will be required to evaluate control measures for VOC as a $PM_{2.5}$ attainment plan

[12] The policy is the same as proposed, with the clarification regarding downwind areas discussed above (Section A.2.b).

precursor for that area. This approach will provide for regulation of VOCs in locations where it is most appropriate.

Comment: One commenter suggested that EPA wait for the results of the pending agricultural emissions study before requiring control of VOCs in agricultural areas.

Response: The $15 million national CAFO consent agreement study coordinated by Purdue University will greatly improve ammonia and VOC emissions inventories and our understanding of the impacts of agricultural emissions on particle formation. The EPA recognizes that the agricultural emissions study is expected to provide data for future planning purposes, and we expect that some of the results of the study will not be available in time to be considered in the development of $PM_{2.5}$ State Implementation Plans dues in April 2008. However, if a State believes it has sufficient technical information to warrant regulation of VOC emissions in their 2008 implementation plans, it may include in its plan a demonstration to reverse the presumption as well as emission reduction measures. The EPA will review each submittal on a case-by-case basis.

5. Policy for NO_X

[Section II.E.2 of November 1, 2005 proposed rule (70 FR 65999); sec. 51.1002 in draft and final regulatory text.]

a. Background

The sources of NO_X are numerous and widespread. The combustion of fossil fuel in boilers for commercial and industrial power generation and in mobile source engines each account for approximately 30 percent of NO_X emissions in $PM_{2.5}$ nonattainment areas (based on 2001 emission inventory information). Nitrates are formed from the oxidation of oxides of nitrogen into nitric acid either during the daytime (reaction with OH) or during the night (reactions with ozone and water). Nitric acid continuously transfers between the gas and the condensed phases through condensation and evaporation processes in the atmosphere. However, unless it reacts with other species (such as ammonia, sea salt, or dust) to form a neutralized salt, it will volatilize and not be measured using standard $PM_{2.5}$ measurement techniques. The formation of aerosol ammonium nitrate is favored by the availability of ammonia, low temperatures, and high relative humidity. Because ammonium nitrate is semivolatile and not stable in higher temperatures, nitrate levels are typically lower in the summer months and higher in the winter months. The resulting ammonium nitrate is usually in the sub-micrometer particle size range. Reactions with sea salt and dust lead to the formation of nitrates in coarse particles. Nitric acid may be dissolved in ambient aerosol particles.

Based on a review of speciated monitoring data analyses, it is apparent that nitrate concentrations vary significantly across the country. For example, in some southeastern locations, annual average nitrate levels are in the range of 6 to 8 percent of total $PM_{2.5}$ mass, whereas nitrate comprises 40 percent or more of $PM_{2.5}$ mass in certain California locations. Nitrate formation is favored by the availability of ammonia, low temperatures, and high relative humidity. It is also dependent upon the relative degree of nearby SO_2 emissions because ammonia reacts preferentially with SO_2 over NO_X. NO_X reductions are expected to reduce $PM_{2.5}$ concentrations in most areas. However, it has been suggested that in a limited number of areas, NO_X control would result in increased $PM_{2.5}$ mass by disrupting the ozone cycle and leading to increased oxidation of SO_2 to form sulfate particles, which are heavier than nitrate particles. Because of the above factors, the proposed rule presumed that States must evaluate and implement reasonable controls on sources of NO_X in all nonattainment areas, but allowed for the State and EPA to develop a technical demonstration to reverse this presumption.

b. Final Rule

The EPA is retaining the proposed approach in the final rule.[13] Under this policy, States are required to address NO_X as a $PM_{2.5}$ attainment plan precursor and evaluate reasonable controls for NO_X in $PM_{2.5}$ attainment plans, unless the State and EPA make a finding that NO_X emissions from sources in the State do not significantly contribute to $PM_{2.5}$ concentrations in the relevant nonattainment area. This presumptive policy is consistent with other recent EPA regulations requiring NO_X reductions which will reduce fine particle pollution, such as the Clean Air Interstate Rule and a number of rules targeting onroad and nonroad engine emissions.

Technical demonstrations that would reverse the presumption should be developed in advance of the attainment demonstration and are discussed in section II.A.8 below.

[13] The policy is the same as proposed, with the clarification regarding downwind areas discussed above (Section A.2.b).

c. Comments and Responses

Comment: Most commenters generally agreed with the proposed inclusion of NO_X as a presumptive $PM_{2.5}$ attainment plan precursor.

Response: The EPA agrees with these commenters.

Comment: Some commenters requested guidance on what would constitute an acceptable demonstration to reverse the presumption that NO_X is a $PM_{2.5}$ attainment plan precursor.

Response: Guidance on technical demonstrations to reverse the presumptive inclusion of NO_X in all state implementation plans is discussed in section II.A.8 below.

Comment: One commenter raised concerns that the proposed policy for NO_X would allow a State to find NO_X to be an insignificant contributor to an area's $PM_{2.5}$ nonattainment problem and effectively keep the State from controlling the area's NO_X emissions for other purposes, such as to address interstate transport under section 110 of the CAA. Section 110 requires SIPs to prohibit emissions within the State that would contribute significantly to another State's nonattainment problem or interfere with another State's maintenance plan.

Response: The identification of precursors for regulation under this rule is for purposes of $PM_{2.5}$ nonattainment and maintenance plans under Part D of the CAA. The $PM_{2.5}$ implementation rule does not prevent a State from regulating NO_X sources under any other Federal or State rule, including interstate transport rules under Section 110.

6. Policy for SO_2

[Section II.E.2 of November 1, 2005 proposed rule (70 FR 65999); sec. 51.1002 in draft and final regulatory text.]

a. Background

Sulfur dioxide is emitted mostly from the combustion of fossil fuels in boilers operated by electric utilities and other industry. Less than 20 percent of SO_2 emissions nationwide are from other sources, mainly other industrial processes such as oil refining and pulp and paper production. The formation of sulfuric acid from the oxidation of SO_2 is an important process affecting most areas in North America. There are three different pathways for this transformation.

First, gaseous SO_2 can be oxidized by the hydroxyl radical (OH) to create sulfuric acid. This gaseous SO_2 oxidation reaction occurs slowly and only in the daytime. Second, SO_2 can

dissolve in cloud water (or fog or rain water), and there it can be oxidized to sulfuric acid by a variety of oxidants, or through catalysis by transition metals such as manganese or iron. If ammonia is present and taken up by the water droplet, then ammonium sulfate will form as a precipitate in the water droplet. After the cloud changes and the droplet evaporates, the sulfuric acid or ammonium sulfate remains in the atmosphere as a particle. This aqueous phase production process involving oxidants can be very fast; in some cases all the available SO_2 can be oxidized in less than an hour. Third, SO_2 can be oxidized in reactions in the particle-bound water in the aerosol particles themselves. This process takes place continuously, but only produces appreciable sulfate in alkaline (dust, sea salt) coarse particles. Oxidation of SO_2 has also been observed on the surfaces of black carbon and metal oxide particles. During the last 20 years, much progress has been made in understanding the first two major pathways, but some important questions still remain about the smaller third pathway. Models indicate that more than half of the sulfuric acid in the eastern United States and in the overall atmosphere is produced in clouds.

The sulfuric acid formed from the above pathways reacts readily with ammonia to form ammonium sulfate, $(NH_4)_2SO_4$. If there is not enough ammonia present to fully neutralize the produced sulfuric acid (one molecule of sulfuric acid requires two molecules of ammonia), part of it exists as ammonium bisulfate, NH_4HSO_4 (one molecule of sulfuric acid and one molecule of ammonia) and the particles are more acidic than ammonium sulfate. In certain situations (in the absence of sufficient ammonia for neutralization), sulfate can exist in particles as sulfuric acid, H_2SO_4. Sulfuric acid often exists in the plumes of stacks where SO_2, SO_3, and water vapor are in much higher concentrations than in the ambient atmosphere, but these concentrations become quite small as the plume is cooled and diluted by mixing.

Because sulfate is a significant contributor (e.g. ranging from 9 percent to 40 percent) to $PM_{2.5}$ concentrations in nonattainment areas and to other air quality problems in all regions of the country, EPA proposed that States would be required to address sulfur dioxide as a $PM_{2.5}$ attainment plan precursor in all areas.

b. Final Rule

The final rule includes the same policy for sulfur dioxide as in the proposal. States are required to address sulfur dioxide as a $PM_{2.5}$ attainment plan precursor and evaluate SO_2 for possible control measures in all areas. Sulfate is an important precursor to $PM_{2.5}$ formation in all areas, and has a strong regional impact on $PM_{2.5}$ concentrations. This policy is consistent with past EPA regulations, such as the CAIR, the Clean Air Visibility Rule, the Acid Rain rules, and the Regional Haze rule, that require SO_2 reductions to address fine particle pollution and related air quality problems.

Under the transportation conformity program, sulfur dioxide is not required to be addressed in transportation conformity determinations *before* a SIP is submitted unless either the state air agency or EPA regional office makes a finding that on-road emissions of sulfur dioxide are significant contributors to the area's $PM_{2.5}$ problem. Sulfur dioxide would be addressed *after* a $PM_{2.5}$ SIP is submitted if the area's SIP contains an adequate or approved motor vehicle emissions budget for sulfur dioxide. EPA based this decision on the *de minimis* level of sulfur dioxide emissions from on-road vehicles currently, and took into consideration the fact that sulfur dioxide emissions from on-road sources will decline in the future due to the implementation of requirements for low sulfur gasoline (which began in 2004) and for low sulfur diesel fuel (beginning in 2006). For more information, see the May 6, 2005 transportation conformity rule on $PM_{2.5}$ precursors at 70 FR 24283.

c. Comments and Responses

Comment: Most commenters agreed with the proposed policy for SO_2. One commenter stated, ''* * * requiring states to address sulfur dioxide in attainment planning in all areas is consistent with the science of $PM_{2.5}$ formation and essential to effective implementation of the $PM_{2.5}$ NAAQS.'' Another commenter concluded that EPA's proposal ''* * * is justified based on the fact that SO_2 has been found to be a significant contributor to $PM_{2.5}$ nonattainment in all areas.''

Response: The EPA agrees with these comments.

Comment: Some commenters believe States should be able to make a demonstration that SO_2 not be addressed as an attainment plan precursor. The commenters claim that the urban increment of sulfate is generally small, and SO_2 control will not matter in many areas. Commenters also note that a large percentage of the SO_2 emission inventory is being reduced and will be reduced further through existing programs, and that if attainment can be demonstrated without additional SO_2 controls, a State should be allowed to make that demonstration in its SIP. One commenter stated that whether SO_2 emissions from a given source located in a nonattainment area in fact contribute significantly to ambient concentrations of sulfate and $PM_{2.5}$ in that nonattainment area likely will depend on a range of factors, including source type, stack height, location, and meteorology. The commenter asserted that sulfate forms over significant geographic distances from the source of the SO_2 emissions and may not form significant concentrations of $PM_{2.5}$ in the local nonattainment area.

Response: As in the proposal, the final rule requires SO_2 to be considered a $PM_{2.5}$ attainment plan precursor in all cases. Sulfate is a significant fraction of $PM_{2.5}$ mass in all nonattainment areas currently, and although large SO_2 reductions are projected from electric generating units with the implementation of the CAIR program, sulfate is still projected to be a key contributor to $PM_{2.5}$ concentrations in the future. SO_2 emissions also lead to sulfate formation on both regional and local scales. The EPA agrees that the extent of the contribution from a particular source in a nonattainment area to $PM_{2.5}$ concentrations in the area will depend on a number of factors, and that at times the reaction of SO_2 emissions in the atmosphere to form sulfate particles may occur less rapidly and extend over a significant distance. However, at other times the conversion of SO_2 to sulfate can occur rapidly and local impacts from a particular source can be more significant. States are required to develop plans to attain as expeditiously as practicable through the identification of technically and economically feasible control measures from the full range of source categories contributing to $PM_{2.5}$ nonattainment areas. In developing these plans, each State will need to consider whether controls on local SO_2 sources would be cost-effective and would be needed to attain expeditiously.

7. Policy for Direct PM

[Section II.E.2 of November 1, 2005 proposed rule (70 FR 65999); sec. 51.1002 in draft and final regulatory text.]

a. Background

This section addresses inorganic and organic forms of directly emitted PM. Although these direct emissions are by definition not precursors to $PM_{2.5}$, this section is included to provide information on the full range of

components that commonly make up fine particulate matter.

The main anthropogenic sources of inorganic (or crustal) particles are: entrainment by vehicular traffic on unpaved or paved roads; mechanical disturbance of soil by highway, commercial, and residential construction; and agricultural field operations (tilling, planting and harvesting). Industrial processes such as quarries, minerals processing, and agricultural crop processing can also emit crustal materials. While much of these emissions are coarse PM, the size distribution can have a tail of particles smaller than $PM_{2.5}$.

In general, coarse PM is most important close to the source, and not generally a significant contributor to regional scale PM problems. Even so, during certain high wind events, fine crustal PM has been shown to be transported over very long distances.

Emission estimates of mechanically suspended crustal PM from sources within the U.S. are often quite high. However, this PM is often released very close to the ground, and with the exception of windblown dust events, thermal or turbulent forces sufficient to lift and transport these particles very far from their source are not usually present. Thus, crustal material is only a minor part of $PM_{2.5}$ annual average concentrations.

Primary carbonaceous particles are largely the result of incomplete combustion of fossil or biomass fuels. This incomplete combustion usually results in emissions of both black carbon and organic carbon particles. High molecular weight organic molecules (i.e., molecules with 25 or more carbon atoms) are either emitted as solid or liquid particles, or as gases that rapidly condense into particle form. These heavy organic molecules sometimes are referred to as volatile organic compounds, but because their characteristics are most like direct PM emissions, they will be considered to be primary emissions for the purposes of this regulation. Primary organic carbon also can be formed by condensation of semi-volatile compounds on the surface of other particles.

The main combustion sources emitting carbonaceous $PM_{2.5}$ are certain industrial processes, managed burning, wildland fires, open burning of waste, residential wood combustion, coal and oil-burning boilers (utility, commercial and industrial), and mobile sources (both onroad and nonroad). Certain organic particles also come from natural sources such as decomposition or crushing of plant detritus. Most combustion processes emit more organic particles than black carbon particles. A notable exception to this is diesel engines, which typically emit more black carbon particles than organic carbon. Because photochemistry is typically reduced in the cooler winter months for much of the country, studies indicate that the carbon fraction of PM mass in the winter months is likely dominated by direct PM emissions as opposed to secondarily formed organic aerosol.

Particles from the earth's crust may contain a combination of metallic oxides and biogenic organic matter. The combustion of surface debris will likely entrain some soil. Additionally, emissions from many processes and from the combustion of fossil fuels contain elements that are chemically similar to soil. Thus, a portion of the emissions from combustion activities may be classified as crustal in a compositional analysis of ambient $PM_{2.5}$. The proposed rule required that States address the direct emissions of particulate matter in their $PM_{2.5}$ attainment plans. During the comment period, EPA received several comments regarding the definition of what should be regulated as ''direct $PM_{2.5}$.''

b. Final Rule

This rule defines direct $PM_{2.5}$ emissions as ''air pollutant emissions of direct fine particulate matter, including organic carbon, elemental carbon, direct sulfate, direct nitrate, and miscellaneous inorganic material (i.e. crustal material).'' Development of attainment plans will include direct $PM_{2.5}$ emissions and specific $PM_{2.5}$ attainment plan precursors.

c. Comments and Responses

Comment: A few commenters noted that 40 CFR 51.1000 of the proposed rule includes definitions for both ''direct $PM_{2.5}$ emissions'' and for ''$PM_{2.5}$ direct emissions.'' They recommend including just one definition in the final rule.

Response: The EPA acknowledges this oversight and has included in the final rule a single definition for ''direct $PM_{2.5}$ emissions.'' It reads: ''Direct $PM_{2.5}$ emissions means solid particles emitted directly from an air emissions source or activity, or gaseous emissions or liquid droplets from an air emissions source or activity which condense to form particulate matter at ambient temperatures. Direct $PM_{2.5}$ emissions include elemental carbon, directly emitted organic carbon, directly emitted sulfate, directly emitted nitrate, and other inorganic particles (including but not limited to crustal material, metals, and sea salt).''

8. Optional Technical Demonstrations for NO_X, VOC, and Ammonia

[Section II.E.2 of November 1, 2005 proposed rule (70 FR 65999); sec. 51.1002 in draft and final regulatory text.]

a. Background

The proposed rule required States to evaluate and consider control strategies for sources of SO_2 and direct $PM_{2.5}$ emissions in all nonattainment areas. For the precursors NO_X, VOC, and ammonia, the proposed rule included presumptive policies that could be reversed with an acceptable technical demonstration by the State or EPA. (The policy in the proposal presumptively required that NO_X emissions must be addressed in all areas, and that VOC and ammonia emissions do not need to be addressed in all areas.) A number of commenters requested additional guidance on the criteria for an acceptable technical demonstration.

b. Final Rule

The final rule retains provisions for the State or EPA to conduct a technical demonstration to reverse the presumptive inclusion of NO_X or to reverse the presumptive exclusions of ammonia and VOC as $PM_{2.5}$ attainment plan precursors. Demonstrations to reverse the presumptions for ammonia, VOC, or NO_X are to be based on the weight of evidence of available information, and any demonstration by the State must be approved by EPA. The State must demonstrate that based on the sum of available technical and scientific information, it would be appropriate for a nonattainment area to reverse the presumptive approach for a particular precursor. The demonstration should include information from multiple sources, including results of speciation data analyses, air quality modeling studies, chemical tracer studies, emission inventories, or special intensive measurement studies to evaluate specific atmospheric chemistry in an area.

Because of the variation among nonattainment areas in terms of such factors as local emissions sources, growth patterns, topography, and severity of the nonattainment problem, EPA believes that it would not be appropriate to define a prescriptive set of analyses that must be included in all $PM_{2.5}$ precursor technical demonstrations. The key criterion is that any technical demonstration must fairly represent available information.

In developing the implementation plan for a nonattainment area, the State should use all relevant information

available (from EPA, the State, or other sources) to determine the scientifically most appropriate approach to regulating NO_X, ammonia, and VOC emissions in the area. As required under any State rulemaking process, the State must consider and provide a response in the record to any information or evidence brought forward by commenters during the SIP planning, development and review process which indicates that the presumption for a precursor should be reversed. In its review of the forthcoming State implementation plan submittal, EPA will review the State's proposed precursor policies in light of all currently available information. If information brought forward by commenters or the State in the SIP development process shows that the presumption in this rule for ammonia, VOC or NO_X is not technically justified for a particular nonattainment area, the State must conduct a technical demonstration to reverse the presumption. In the case of ammonia or VOC, the State then would evaluate control measures and implement those measures that are technically and economically feasible and that will contribute to expeditious attainment of the standards.

In the section below we suggest examples of the types of analyses that would be appropriate to use in developing such a demonstration. States are encouraged to consult with EPA in formulating appropriate technical demonstrations.

i. *Emission Inventory Information:* An analysis might show that a precursor composes a significant fraction of the emissions inventory in an area and therefore requires greater consideration.

Example: Several stationary sources emitting particular VOCs known to contribute to SOA formation make up a significant portion of the area's VOC inventory. This analysis may be useful in conjunction with other analyses included in a weight of evidence demonstration.

ii. *Speciation Data Information:* Analysis of data from speciation networks might lead a State to determine the relative importance of a precursor to seasonal or yearly average PM concentrations. Individual precursors require different approaches. Collection of new data could be used to understand the impacts of precursors in an area.

Example: Nitrate ion is a large portion of winter average $PM_{2.5}$ mass. Nitrate ion is a major portion of $PM_{2.5}$ mass on the 10 highest $PM_{2.5}$ days in winter in the past 3 years. The days with the highest mass concentrations might be indicative of inversion conditions and/or local impacts, rather than large-scale transport processes. For these reasons, nitrate should be addressed in the $PM_{2.5}$ attainment plan.

Example: Ammonium ion data combined with total calculated nitrate data indicates that reductions in ammonia would reduce PM concentrations without a sharp related increase in particle acidity. PM speciation data shows that PM in the area is generally within 10% of calculated neutralization. In places for which the needed atmospheric data are available to determine whether increased acidity is estimated to lead to negative environmental effects, analysis showing that increased acidity of particles and precipitation would likely result from ammonia reductions would support the presumption against ammonia regulation. Analysis showing that ammonia reductions would be unlikely to increase the acidity of particles and precipitation, and that potential reductions in ammonia would significantly reduce $PM_{2.5}$ levels, would support a technical demonstration to reverse the presumption.

iii. *Modeling Information:* Results of atmospheric modeling may help a State characterize the impacts of potential precursor emission reductions on $PM_{2.5}$ concentrations in an area.

Example: Modeling of SO_2, NO_X, and VOC emission reductions result in lower sulfate and nitrate levels but not lower secondary organic aerosol levels. This likely indicates that VOC reductions are not as vital as reductions of the other precursors.

Example: Modeled reductions of NO_X show a potential increase in sulfate formation through disruption of the ozone cycle. SO_2 reductions may be a better choice than NO_X reductions.

Example: Modeled ammonia reductions show a projected reduction in $PM_{2.5}$ concentrations in selected areas. Although dependant on good quality inventory data, this type of an analysis would indicate that the area is ammonia-limited and that ammonia reductions may be beneficial.

Example: Modeling shows that reductions in SO_2 in the absence of NO_X reductions in an area will not result in a significant $PM_{2.5}$ reduction because more nitrate particles form when less SO_2 is available for particle formation. However, $PM_{2.5}$ reductions are significant when both SO_2 and NO_X are reduced concurrently. This analysis would indicate that NO_X reductions should be included in the $PM_{2.5}$ attainment plan for the area.

iv. *Monitoring, Data Analysis, or Other Special Studies:* Could include monitoring of gases and compounds not typically monitored under the $PM_{2.5}$ speciation network, receptor modeling analysis, or special monitoring studies.

Example: Data from specialized monitoring studies can provide insights about concentrations of ammonia gas and nitric acid in an area and whether the area is ammonia-limited or not. Ammonia reductions in ammonia-limited areas typically yield reductions in $PM_{2.5}$ concentrations. Specialized monitoring and laboratory studies can also assess the relative concentrations of organic compounds and provide insights into the contributions of different anthropogenic and biogenic VOCs to secondary organic aerosol formation.

Example: Receptor modeling and statistical analysis $PM_{2.5}$ speciation monitoring data can indicate relative contributions to $PM_{2.5}$ mass from sources with different chemical ''fingerprints.''

Example: Additional analysis of organic compounds on filters collected through speciation monitoring may reveal insights about the relative degree of carbonaceous material considered to be from fossil fuel combustion as opposed to combustion of ''modern'' material (such as wood or biomass).

c. Comments and Responses

Comment: A number of commenters requested that the final rule include guidance on acceptable technical demonstrations.

Response: The above section includes examples designed to help States formulate appropriate demonstrations. Prescribing specific technical indicators to be used in all areas would ignore the scientific uncertainty inherent in the relationships between precursor emissions and the responses of atmospheric concentrations of $PM_{2.5}$. Therefore, States are encouraged to review available information and consult with EPA in formulating technical demonstrations appropriate to a particular area.

B. No Classification System

1. No Classification System

a. Background

Section 172 of subpart 1 contains the general requirements for SIPs for all nonattainment areas. Section 172(a)(1) states that on or after the date of designation, the Administrator may classify an area for the purpose of applying an attainment date or for some other purpose. Thus, a classification system is allowed under section 172 of the CAA, but is not required for the purposes of implementing a national ambient air quality standard. The CAA also states that EPA may consider certain factors in making a decision concerning classification for areas, such as the severity of nonattainment in such areas, and the availability and feasibility of the pollution control measures that may be needed to achieve attainment. In the proposed rule, EPA provided two implementation approaches for classifying $PM_{2.5}$ nonattainment areas. Under the first approach, there would be no classification system. Under the second approach, a two-tiered classification system would apply, with areas classified as either ''moderate'' or ''serious'' based on specific criteria.

For example, the two classification tiers could be based on the severity of nonattainment (e.g., serious areas would be those with a design value above a specific threshold), or on the attainment date for the area (e.g., serious areas would be those with attainment dates after April 2010). However, any moderate area that needs an attainment date longer than 5 years would be reclassified as serious. This would ensure that areas with a more persistent $PM_{2.5}$ problem are subject to more stringent requirements, even if they are not one of the areas with the highest current design values. For such areas, the State would be required to request reclassification for an area and ensure that the 2008 attainment SIP submission for the area includes all measures needed to meet the serious area requirements. Under the two tiered classification approach, we proposed that serious $PM_{2.5}$ nonattainment areas would be required to meet the more stringent requirements than moderate areas that would be defined in this rulemaking action (e.g., lower thresholds for RACT, fixed percentage reduction for RFP, etc.). For serious areas, the attainment date would be as expeditious as practicable, but no later than 10 years after designation, depending on the year in which the area would be projected to attain considering existing control requirements and the effect of RACM, RACT and RFP.

b. Final Rule

The EPA believes that in the case of $PM_{2.5}$, the no-classification approach is the most appropriate approach. An advantage of this approach is that it provides a relatively simple implementation structure for State implementation of the $PM_{2.5}$ standards, and avoids the need to define a classification system and determine classifications for each area. Without classifications, this rule still requires that that SIPs include all reasonable measures that contribute to achieving attainment as expeditiously as practicable. (Further detail is provided in sections D. and F. below.) Because of differences in the nature and sources of the $PM_{2.5}$ problem in different parts of the country, EPA did not find it appropriate to establish a tiered classification system with increasing control measure requirements. The no-classifications approach provides States with greater flexibility to determine the control strategies that will be most effective and efficient in bringing specific areas into attainment as expeditiously as practicable. In addition, EPA believes that States requesting additional time to attain the standard beyond the initial 5 year attainment date, provided for under Subpart I, will need to adopt additional or more stringent measures to meet their obligations for RACT, RACM and attainment that is as expeditious as practicable. We believe that this addresses the main concerns of those commenters who contend that a two tiered classification system should be implemented.

c. Comments and Responses

Comment: The majority of the commenters who commented on this issue stated that they agreed with EPA's preferred no classification approach. These commenters generally stated that they believed that EPA has the authority not to establish a classification system for $PM_{2.5}$ nonattainment areas. Some commenters stated that it would also be unreasonable, at this point in the process, for EPA to implement a classification scheme for the $PM_{2.5}$ standard. Many commenters support the no classification approach because it provides for a simple implementation structure and/or allows greater implementation flexibility to States, including flexibility to address specific problems related to individual nonattainment areas in the most cost-effective and expeditious manner, rather than through a one size fits all approach. Other commenters stated that they believe that a classification system is not needed because nonattainment areas in the Eastern United States are likely to attain the standard within a timeframe that is consistent with the timeframe established under Subpart 1.

Response: The EPA agrees with these commenters.

Comment: Several commenters disagreed with EPA's preferred approach and agreed with the two tiered classification approach featuring a ''moderate'' and a ''serious'' area classification. These commenters also stated that the threat of reclassification or ''bump up'' to a higher classification was a powerful incentive for areas to attain as expeditiously as practicable. Commenters also indicated that areas needing more time to attain the standard should be required to implement more stringent measures or mandatory measures.

Response: The EPA agrees that areas with more severe nonattainment problems will need to implement more stringent measures to attain. However, EPA does not believe that a classification system is needed to ensure that such measures are implemented. The EPA believes that on balance the no classification approach is the most appropriate classification option for the implementation of the $PM_{2.5}$ standard because of the difference in contributing sources from area to area.

Comment: Several commenters stated that under EPA's preferred approach, each State would be required to submit an attainment demonstration proposing an attainment date that is ''as expeditious as practicable'' for each area. They asserted that to allow States to propose their own attainment dates would invite delay in the process of cleaning up fine particle pollution. These commenters further stated that States would have no incentive to set an attainment date earlier than the outer limit set by EPA, even if it would be practicable to attain the NAAQS sooner.

Response: Section 172 of the CAA requires SIPs to demonstrate attainment as expeditiously as practicable regardless of whether there is a classification system, and under this rule states must justify that their attainment date is as expeditious as practicable considering all reasonable measures. As noted above, EPA believes that States requesting additional time to attain the standard beyond the initial 5 year attainment date will need to adopt additional or more stringent measures to meet their obligations for RACT and RACM and to attain as expeditiously as practicable. More details on the analytical process required for an attainment demonstration is included in section II.F.

Comment: Several commenters stated that the CAA requires regulation of the $PM_{2.5}$ standard under Subpart 4 of Part D. These commenters state that EPA takes the position that it must regulate $PM_{2.5}$ under Subpart 1 of the CAA, which applies to nonattainment areas in general. The commenters state that section 7513, in Subpart 4 of Part D of the CAA, contains specific provisions for classification of particulate matter nonattainment areas, and that EPA must therefore regulate $PM_{2.5}$ under Subpart 4, which requires a moderate and serious area classification system. Other commenters argued that implementation of the $PM_{2.5}$ standard must proceed under Subpart 1 of Part D of Title I of the CAA and cannot be governed by Subpart 4 of Part D, which addresses the implementation of the PM_{10} standard which is a different pollutant than $PM_{2.5}$.

Response: The EPA finds that the $PM_{2.5}$ standard should be implemented under subpart I of the CAA, which is the general provision of the CAA related to NAAQS implementation. Part D of Title I of the CAA sets forth the requirements for SIPs needed to attain the national ambient air quality standards. Part D also includes a general provision under

Subpart I which applies to all NAAQS for which a specific subpart does not exist. Because the $PM_{2.5}$ standards were not established until 1997, the plan provisions found in section 172 of subpart 1 pertaining to plans for nonattainment areas apply. The EPA further agrees with comments stating that subpart 4 on its face applies only to the PM_{10} standard. In general, the emphasis in subpart 4 on reducing PM_{10} concentrations from certain sources of direct $PM_{2.5}$ emissions can be somewhat effective in certain $PM_{2.5}$ nonattainment areas but not in all. Contributions to $PM_{2.5}$ concentrations are typically from a complex mix of sources of primary emissions and sources of precursor emissions which form particles through reactions in the atmosphere. $PM_{2.5}$ also differs from PM_{10} in terms of atmospheric dispersion characteristics, chemical composition, and contribution from regional transport.

2. Rural Transport Classification Option

a. Background

The 8-hour ozone implementation program includes a ''rural transport classification'' for subpart 1 nonattainment areas. In the proposal for this rule we discussed whether an area classification of this type would be appropriate for the $PM_{2.5}$ implementation program in light of the fact that no currently designated $PM_{2.5}$ nonattainment area met the criteria similar to those that apply to rural transport areas under the ozone implementation program.

As addressed in the proposal, a $PM_{2.5}$ nonattainment area would qualify for the ''rural transport'' classification if it met criteria similar to those specified for rural transport areas for the 1-hour ozone standard under section 182(h). Section 182(h) defines ''rural transport'' areas as those areas that do not include, and are not adjacent to, any part of a Metropolitan Statistical Area (MSA) or, where one exists, a Consolidated Metropolitan Statistical Area (CMSA). Section 182(h) further limits the category to those areas whose own emissions do not make a significant contribution to pollutant concentrations in those areas, or in other areas.

As discussed in the preamble to the proposed rule, potential criteria for a State to identify an area for a rural transport classification under the $PM_{2.5}$ program could be similar to the criteria used in the ozone implementation program: A State with a $PM_{2.5}$ ''rural transport'' area would need to (1) demonstrate that the area meets the above criteria, (2) demonstrate using EPA approved attainment modeling that the nonattainment problem in the area is due to the ''overwhelming transport'' of emissions from outside the area, and (3) demonstrate that sources of $PM_{2.5}$ and its precursor emissions within the boundaries of the area do not contribute significantly to $PM_{2.5}$ concentrations that are measured in the area or in other areas.

An area which qualifies for the ''rural transport'' classification would only be required to adopt local control measures sufficient to demonstrate that the area would attain the standard by its attainment date ''but for'' the overwhelming transport of emissions emanating from upwind States. RFP requirements under subpart 1 would still apply to these areas. As with other nonattainment areas, rural transport nonattainment areas would be subject to NSR, transportation conformity, and general conformity requirements. In the proposal we solicited comments on whether it would be appropriate to establish less burdensome NSR requirements in the event that a classification for rural transport areas is adopted in the final rule. The EPA requested comment on whether this type of classification option is needed at all under the $PM_{2.5}$ implementation program.

b. Final Rule

The final rule does not include a rural transport classification. This type of classification was included in the CAA for purposes of implementing the ozone standards because of the phenomenon of the formation of high ozone levels far downwind in very rural locations, including on high elevation mountain peaks. In reviewing the currently designated $PM_{2.5}$ nonattainment areas, it appears that all areas but one are within or adjacent to a metropolitan area (*i.e.* core-based statistical area or consolidated statistical area), and thus would not meet the criteria discussed above. Although $PM_{2.5}$ concentrations are greatly affected by long-range transport of air pollution, it appears that nonattainment areas typically are located in urban areas and include significant local pollutant sources.

c. Comments and Responses

Comment: Several commenters stated that they do not support the adoption of a rural transport classification because it is not needed. Commenters stated that given the criteria for the rural transport classification, which greatly limits its applicability, few if any $PM_{2.5}$ nonattainment areas can qualify for the option. One commenter stated that EPA modeled the rural transport classification after the ''rural transport areas'' provision contained in subpart 2 of the CAA, which applies only to the ozone standard. The commenter further states that neither Subpart 1 nor 4 contain any statutory authority for such a classification.

Response: The EPA believes that it has sufficient statutory authority under the CAA to establish a rural transport classification, but we do not believe that such a classification is needed.

Comment: One commenter generally supported the rural transport concept and the proposed associated requirements, with the addition that data analysis be included as appropriate in the required technical demonstrations in addition to modeling. While no $PM_{2.5}$ area currently meets the requirements for the rural transport classification option, several commenters recommended that it be maintained for potential cases in which the $PM_{2.5}$ standards are made more stringent, or measured air quality in areas change in such a way that areas would qualify for the rural transport classification at a later date.

Response: The EPA does not agree that a rural transport classification is needed. The EPA will re-evaluate the need for such a classification as appropriate.

C. Due Dates and Basic Requirements for Attainment Demonstrations

a. Background

Part D of Title I of the CAA sets forth the requirements for SIPs needed to attain the national ambient air quality standards. Part D includes a general subpart 1 which applies to all NAAQS for which a specific subpart does not exist. The 1990 CAA Amendments do not include any subpart for $PM_{2.5}$ because the $PM_{2.5}$ standards were not yet established. The EPA has determined that for $PM_{2.5}$, the nonattainment area plan provisions found in section 172 of subpart 1 apply.

Section 172(b) of the CAA requires that at the time the Agency promulgates nonattainment area designations, the EPA must also establish a schedule for States to submit SIPs meeting the applicable requirements of section 172(c) and of section 110(a)(2) of the CAA. Nonattainment area designations were finalized in December 2004, and a supplemental notice was issued in April 2005. Consistent with section 172(b) of the CAA, 40 CFR 51.1002 of the proposed rule requires the State to submit its attainment demonstration and SIP revision within 3 years, or by April 2008.

Section 51.1006 of the proposed rule addresses the situation in which an area

is initially designated as attainment/unclassifiable but is later designated as nonattainment based on air quality data after the 2001–2003 period. Under such circumstances, the SIP submittal date would be 3 years from the effective date of the redesignation, and the attainment date would be as expeditiously as practicable but no later than 5 years from the effective date of the redesignation.

The section 172(c) requirements that States are to address under section 172(c) (including RACT, RACM, RFP, contingency measures, emission inventory requirements, and NSR) are discussed in later sections of this document. Section 110(a)(2) of the CAA requires all States to develop and maintain a solid air quality management infrastructure, including enforceable emission limitations, an ambient monitoring program, an enforcement program, air quality modeling, and adequate personnel, resources, and legal authority. Section 110(a)(2)(D) also requires State plans to prohibit emissions from within the State which contribute significantly to nonattainment or maintenance areas in any other State, or which interfere with programs under part C to prevent significant deterioration of air quality or to achieve reasonable progress toward the national visibility goal for Federal class I areas (national parks and wilderness areas). In order to assist States in addressing their obligations regarding regionally transported pollution, EPA has finalized the CAIR to reduce SO_2 and nitrogen oxide emissions from large electric generating units.[14]

To date, few states have submitted a SIP revision addressing the section 110(a)(2) requirements for the purposes of implementing the $PM_{2.5}$ standards. The EPA recognizes that this situation is due in part to the fact that there were a series of legal challenges to the PM standards which were not resolved until March 2002, at which time the standards and EPA's decision process were upheld (see section I.B. for further discussion of past legal challenges to the standards). To address the States' continuing obligation to address the requirements of section 110(a), 40 CFR 51.1002 of the proposed rule also required each State to address the required elements of section 110(a)(2) of the CAA as part of the SIP revision adopting its attainment plan, if it has not already done so. On March 10, 2005, EPA entered into a consent decree with Environmental Defense and American Lung Association concerning EPA's failure to find that States failed to submit SIPs to address the section 110(a)(2) requirements. As a part of that consent decree, by no later than October 8, 2008, EPA is required to publish a notice in the **Federal Register** related to its determinations of whether each State has submitted SIPs for $PM_{2.5}$ that meet the requirements as stated under section 110(a)(2) of the CAA.

b. Final Rule

The final rule maintains the regulatory approach described above.

c. Comments and Responses

There were no comments on this portion of the proposal.

D. Attainment Dates

1. Background on Statutory Requirements

Establishing attainment dates. Section 172(a)(2) states that an area's attainment date ''shall be the date by which attainment can be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment * * *, except that the Administrator may extend the attainment date to the extent the Administrator determines appropriate, for a period no greater than 10 years from the date of designation as nonattainment considering the severity of nonattainment and the availability and feasibility of pollution control measures.''

Since $PM_{2.5}$ designations have an effective date of April 5, 2005, the initial 5-year attainment date for $PM_{2.5}$ areas would be no later than April 5, 2010. For an area with an attainment date of April 5, 2010, EPA would determine whether it had attained the standard by evaluating air quality data from the three previous calendar years (i.e. 2007, 2008, and 2009).

For any areas that are granted the full 5 year attainment date extension under section 172, the attainment date would be no later than April 5, 2015. For such areas, EPA would determine whether they have attained the standard by evaluating air quality data from 2012, 2013, and 2014. Section 51.1004 of the proposed regulations addressed the attainment date requirement. Section 51.1004(b) provided that in their attainment demonstrations, States would propose an attainment date representing attainment as expeditiously as practicable based upon implementation of existing Federal and State measures, and all new reasonable local and intrastate measures. The EPA would approve a particular attainment date based on its review of the attainment demonstration.

Determining Whether an Area Has Attained. The EPA has the responsibility for determining whether a nonattainment area has attained the standard by its applicable attainment date. Section 179(c)(1) of the Act requires EPA to make determinations of attainment no later than 6 months following the attainment date for the area. Under section 179(c)(2), EPA must publish a notice in the **Federal Register** identifying those areas which failed to attain by the applicable attainment date. The statute further provides that EPA may revise or supplement its determination of attainment for the affected areas based upon more complete information or analysis concerning the air quality for the area as of the area's attainment date.

Section 179(c)(1) of the Act provides that the attainment determination for an area is to be based upon an area's ''air quality data as of the attainment date.'' The EPA will make the determination of whether an area's air quality is meeting the $PM_{2.5}$ NAAQS by the applicable attainment date primarily based upon data gathered from the air quality monitoring sites which have been entered into EPA's Air Quality System (AQS) database. No special or additional SIP submittal will be required from the State for this determination.

A $PM_{2.5}$ nonattainment area's air quality status is determined in accordance with appendix N of 40 CFR part 50. To show attainment of the 24-hour and annual standards for $PM_{2.5}$, the most recent three consecutive years of data prior to the area's attainment date must show that $PM_{2.5}$ concentrations over a three-year period are at or below the levels of the standards. A complete year of air quality data, as described in part 50, Appendix N, comprises of all 4 calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days. The annual standard for $PM_{2.5}$ is attained when the 3-year average annual mean concentration is less than or equal to 15.05 $\mu g/m^3$. The 24-hour standard for $PM_{2.5}$ is met when the average of 98th percentile values for three consecutive calendar years at each monitoring site is less than or equal to 65.5 $\mu g/m^3$.

The EPA will begin processing and analyzing data related to the attainment of $PM_{2.5}$ areas immediately after the applicable attainment date for the affected areas. Current EPA policy, under 40 CFR part 58, sets the deadline for submittal of air quality data into the AQS database for no later than 90 days after the end of the calendar year.

[14] More information on the Clean Air Interstate Rule (CAIR) is available at: *http://www.epa.gov/cair.*

While EPA may determine that an area's air quality data indicates that an area may be meeting the $PM_{2.5}$ NAAQS for a specified period of time, this does not eliminate the State's responsibility under the Act to adopt and implement an approvable SIP. If EPA determines that an area has attained the standard as of its attainment date, the area will remain classified as nonattainment until the State has requested, and EPA has approved, redesignation to attainment for the area.

In order for an area to be redesignated as attainment, the State must comply with the five requirements listed under section 107(d)(3)(E) of the Act. This section requires that:

—EPA has determined that the area has met the $PM_{2.5}$ NAAQS;
—EPA has fully approved the state's implementation plan;
—The improvement in air quality is due to permanent and enforceable reductions in emissions;
—EPA has fully approved a maintenance plan for the area;
—The State(s) containing the area have met all applicable requirements under section 110 and part D.

2. Establishing Attainment Dates

a. Background

The EPA proposed rule language on attainment dates that closely tracks the statutory language. In the preamble, EPA noted that the attainment date that is as expeditious as practicable should reflect the projected impact of existing national and State programs (e.g. partial implementation of the CAIR rule, final Acid Rain Program, motor vehicle tier II standards and heavy-duty diesel engine standards, NO_X SIP call, State legislation such as Clean Smokestacks bill in North Carolina) as well as additional reasonable measures required for the $PM_{2.5}$ nonattainment SIP.

With respect to its authority to extend an area's date beyond 5 years, EPA stated in the preamble that the State can submit a SIP demonstrating that it is impracticable to attain by the 5-year attainment date: ''As stated previously, under section 172(a)(2)(A), EPA may grant an area an extension of the initial attainment date for a period of one to 5 years. States that request an extension of the attainment date under this provision of the CAA must submit a SIP by April 5, 2008 that includes, among other things, an attainment demonstration showing that attainment within 5 years of the designation date is impracticable. It must also show that the area will attain the standard by an alternative date that is as expeditious as practicable, but in no case later than 10 years after the designation date for the area (i.e. by April 5, 2015 for an area with an effective designation date of April 5, 2005). An appropriate extension in some cases may be only 1 or 2 years—a 5-year extension is not automatic upon request.

The attainment demonstration must provide sufficient information to show that attainment by the initial attainment date is impracticable due the severity of the nonattainment problem in the area, the lack of available control measures, and any other pertinent information related to these statutory criteria. States requesting an extension of the attainment date must also demonstrate that all local control measures that are reasonably available and technically feasible for the area are currently being implemented to bring about expeditious attainment of the standard by the alternative attainment date for the area. The State's plan will need to project the emissions reductions expected due to Federally enforceable national standards, State regulations, and local measures such as RACT and RACM, and then conduct modeling to project the level of air quality improvement in accordance with EPA's modeling guidance. The EPA will not grant an extension of the attainment date beyond the initial 5 years required by section 172(a)(2)(A) for an area if the State has not considered the implementation of all RACM and RACT local control measures for the area (see section III.I for a more detailed discussion of RACT and RACM). The EPA also will examine whether the State has adequately considered measures to address intrastate transport of pollution from sources within its jurisdiction. In attainment planning, States have the obligation and authority to address the transport of pollution from one area of the State to another. Any decision made by EPA to extend the attainment date for an area beyond its original attainment date will be based on facts specific to the nonattainment area at issue and will only be made after providing notice in the **Federal Register** and an opportunity for the public to comment.''

b. Final Rule

We are adopting the approach described above from the proposed rule. We also wish to clarify language that was in the preamble to the proposed rule regarding the criteria for an extension. The preamble stated that attainment date extensions would be based on the two statutory extension criteria—''the severity of nonattainment, and the availability and feasibility of pollution control measures,''—as well as ''other pertinent information which shows that additional time is required for the area to attain the standard.'' The CAA does not include this third clause and the regulatory text for the final rule does not include this third clause. The intent of this language in the preamble to the proposal was that States could include ''other pertinent information'' related to the two statutory criteria.

c. Comments and Responses

Comment: Some commenters expressed concern that EPA's preamble language appeared to assert a new basis for granting extensions not provided by the statute. They said EPA has authority to extend the attainment date under Section 7502(a)(2) based solely on consideration of two enumerated factors: the severity of nonattainment, and the availability and feasibility of control measures.

Response: The EPA agrees that extensions must be based upon the two factors in the statute, which are quite broad. A clarification of the preamble phrase cited by the commenter is provided above. The phrase in question—''any other pertinent information which shows that additional time is required for the area to attain the standard''—refers to information that relates to the two statutory factors.

Comment: One commenter stated that an area should qualify for an extension only if the area will implement stringent local controls, yet still cannot practicably attain by the five-year deadline. The commenter stated that at a minimum, EPA must require states to adopt RACM for both mobile and stationary sources before granting an extension. Another commenter said that given the difficulty many areas will have in meeting the five-year deadline for attainment of the $PM_{2.5}$ NAAQS (and especially in light of the fact that the deadline occurs only 2 years after states are to submit attainment SIPs), EPA should provide maximum flexibility in allowing extensions to the full 10-year period.

Response: The EPA agrees that extensions should be granted only if an area cannot practicably attain within 5 years despite application of all reasonable measures, including RACM. Although some measures can be implemented within a year or two, many measures require a longer period for installation of controls or full program implementation. In light of the limited time period between the SIP submittal deadline and the 5-year date, EPA believes that a significant number of areas may warrant extensions ranging from one to 5 years, with the length of

extension depending on the factors described above.

Comment: One commenter advocated that EPA include in this final rule a determination of those areas for which attainment within 5 years is impracticable. Another commenter advocated that EPA establish guidance based on EPA national modeling conducted last year to establish 2015 as constituting expeditious attainment for certain areas.

Response: The EPA is not determining in this rulemaking the areas that should receive extensions or should receive the maximum 10-year attainment date, for several reasons. First, EPA did not propose such an approach. Therefore, the public has not had the opportunity to comment on the approach or on the technical information on which EPA would make such judgments.

Second, EPA believes that modeling being conducted by the states, with updated inventories and finer grids, will generally provide a more reliable basis for projecting future $PM_{2.5}$ base case levels than national modeling conducted by EPA with older information. State modeling of future year $PM_{2.5}$ levels that has been conducted to date indicates that some areas will start closer or farther from the standard than EPA had projected.

Third, the SIP process provides a forum for states to identify reasonable controls and conduct analyses to determine the appropriate attainment date for an area. This process provides for input from expert stakeholders, the general public, other states which may share the same multi-State nonattainment area, and EPA on decisions regarding controls and attainment dates. At this time, EPA does not have the benefit of this process to inform a judgment as to when areas can practicably attain. States are responsible for developing RACM demonstrations; at this time, EPA lacks the information to conduct a credible RACM demonstration for all $PM_{2.5}$ nonattainment areas.

Fourth, no State commenter advocated that EPA attempt to make these judgments on attainment dates in advance of the State SIP process. The statute gives the states the lead in developing State implementation plans.

Comment: Another commenter recommends that an area should receive an attainment date extension when collectively the following conditions have been met:

- It is proven through modeling that the region is adversely effected by transport of $PM_{2.5}$ emissions from up wind sources beyond that State's control;
- A State has submitted and committed to implementing all Federal $PM_{2.5}$ emission reduction requirements in a timely manner; and,
- The extension concept is approved through the State air agency or through the MPO Interagency Consultation Process at the MPO level if applicable.

Response: This commenter advocates for attainment date extensions without any consideration of reasonable local measures. As stated above, EPA believes that extensions should be granted only if an area cannot practicably attain within 5 years despite application of all reasonable measures, including RACM. Although some measures can be implemented within a year or two, many measures may require a longer period for installation of controls or full program implementation. In light of the limited time period between the SIP submittal deadline and the 5-year date, EPA believes that a significant number of areas may warrant extensions ranging from one to 5 years, with the length of extension depending on the factors described above.

3. Attainment Dates: 1-Year Extensions

a. Background

Subpart 1 provides for States to request two 1-year extensions of the attainment date for a nonattainment area under limited circumstances. Section 172(a)(2)(C) of the CAA provides that EPA initially may extend an area's attainment date for 1 year, provided that the State has complied with all the requirements and commitments pertaining to the area in the applicable implementation plan, and provided that the area has had no more than a minimal number of ''exceedances'' of the relevant standard in the preceding year. Because the $PM_{2.5}$ standards do not have exceedance-based forms but are based on 3-year averaging periods, we interpret the air quality test in 40 CFR 51.1005 to mean that the area would need to have ''clean data'' for the third of the 3 years that are to be evaluated to determine attainment.[15] By this we mean that for the third year, the air quality for all monitors in the area as analyzed in accordance with Appendix N to 40 CFR part 50 each must have an annual average of 15.0 $\mu g/m^3$ or less, and a 98th percentile of 24-hour monitoring values of 65 $\mu g/m^3$ or less in order to qualify for a 1-year extension. (Given the rounding provisions specified in 40 CFR part 50, Appendix N, these criteria would be satisfied if the concentrations before final rounding are less than an annual average of 15.05 $\mu g/m^3$ and a 24-hour value of 65.5 $\mu g/m^3$.)

For example, suppose an area in violation of the annual standard has an attainment date of April 2010, and its annual average for 2007 was 15.8 and for 2008 was 15.6. If the annual average for the area in 2009 is 14.9, then the 3-year average would be 15.4, and it would not have attained the standard. We interpret section 172(a)(2)(C) as allowing the area to submit a request to EPA for a 1-year extension of its attainment date to 2011 (provided the State has also complied with its requirements and commitments) since the 14.9 ambient air quality value in the third year (2009) met the test of being at or below 15.0. Section 51.1005(a) of the proposed regulation addresses the initial 1-year attainment date extension.

The air quality measured in 2010 in conjunction with prior data will determine if the area attains the standard, qualifies for a second 1-year extension, or does not attain the standard. For example, if the area's annual average for 2010 is 14.3, then its 3-year average for 2008–2010 would be 14.9 and it would have met the annual standard.

If the area's annual average for 2010 is 14.9, however, then its 3-year average for 2008–2010 would be 15.1. In this situation the area would not have attained the standard, but the area would meet the air quality test for the second of the 1-year extensions allowed under section 172(a)(2)(C), because the 2010 annual average was at or below 15.0. Section 51.1005(b) of the proposed rule addresses the second 1-year attainment date extension. After obtaining a second 1-year extension, the State would evaluate whether the air quality values in 2011, in conjunction with 2009 and 2010 data, bring the area into attainment.

Pursuant to section 172(a)(2)(C), States must submit additional information to EPA to demonstrate that they have complied with applicable requirements, commitments, and milestones in the implementation plan. This information is needed in order for EPA to make a decision on whether to grant a 1-year attainment date extension. The EPA will not be inclined to grant a 1-year attainment date extension to an area unless the State can demonstrate that it has met important requirements contained in the area's implementation plan. States must demonstrate that: (1) Control measures have been submitted in the form of a SIP revision and substantially implemented to satisfy the requirements of RACT and RACM for the area, (2) the area has made emissions reductions progress that

[15] See section 51.1005 of the proposed regulation.

represents reasonable further progress (RFP) toward attainment of the NAAQS, and (3) trends related to recent air quality data for the area indicate that the area is in fact making progress toward attainment of the standard. Any decision made by EPA to extend the attainment date for an area will be based on facts specific to the nonattainment area at issue, and will only be made after providing notice in the **Federal Register** and an opportunity for the public to comment.

If an area fails to attain the standard by the attainment date, EPA would publish a finding to this effect in accordance with section 179 of the CAA. The area then would be required, within 1 year of publication of this finding, to develop a revised SIP containing additional emission reduction measures needed to attain the standard as expeditiously as practicable.

b. Final Rule

The final rule retains the proposed criteria for states to receive a 1-year attainment date extension for a nonattainment area.

c. Comments and Responses

Comment: A number of commenters supported EPA's ability to grant a 1-year attainment date extension if monitoring data indicate that the $PM_{2.5}$ levels during the most recent year were below 15.05 $\mu g/m^3$.

Response: The EPA agrees with these comments.

Comment: Some commenters recommended that a 1-year extension be provided if the trend line of the area's emissions levels or air quality data projects attainment in the extension year.

Response: The EPA believes that 1-year extensions should be based on air quality data, which can be assessed quickly after the end of the year. Basing such extensions solely on emissions trends would be impractical due to the longer turnaround time needed to evaluate emissions changes affecting a monitor.

Comment: One commenter believes the current requirement is overly stringent and inconsistent with the statute. The commenter believes that EPA's proposed approach incorrectly defines the statutory language referring to a ''minimal number of exceedances'' of the standard in the previous year as ''zero'' exceedances. Alternatively, the commenter suggests EPA could withdraw this provision and provide more detailed guidance giving the Agency and states some flexibility to demonstrate that exceedances were minimal in a given case since nothing in the statute requires the rigid definition of minimal that EPA proposes.

Response: The EPA believes the policy in the final rule is a reasonable application of the statutory language to a standard not based on exceedances. The EPA does not believe it would be appropriate to provide a 1-year extension to an area with air quality data showing it violating the standard over the 3 years prior to the attainment year.

4. Achieving ''Clean Data''

a. Background

Section III.D of the preamble to the proposed rule describes the incentives for attaining the standards prior to April 2008, when SIP submittals are due, or prior to an area's approved attainment date. Areas with design values just over the level of the standard may be able to achieve reductions in the local area or in the State so that, when their effect is considered in combination with reductions achieved under national programs, they may be sufficient to attain the standards before SIPs are due in 2008. For example, if monitoring in a nonattainment area shows that the air quality for 2004–2006 meets the standards, then the area may be subject to reduced regulatory requirements and be redesignated as ''attainment.''

The EPA issued a ''Clean Data'' policy memorandum in December 2004 describing possible reduced regulatory requirements for areas that attain the standards, but have not yet been redesignated as attainment.[16]

b. Final Rule

In the proposed rule, EPA indicated that it had issued this ''Clean Data'' policy to apply for purposes of the $PM_{2.5}$ standards. In this action EPA is finalizing as a rule the statutory interpretation that is embodied in the policy. Section 51.1004(c). The text of the final rule encapsulates the statutory interpretation set forth in the policy. Determinations as to whether individual areas have attained the $PM_{2.5}$ standard and thus qualify for application of the new clean data rule will be made in the context of rulemakings for those individual areas.

The preamble to the proposed rule mistakenly stated that if an area achieved ''clean data,'' it would be ''relieved of the requirements to implement the nonattainment NSR program otherwise required for nonattainment areas, and instead would implement the PSD program.'' The EPA wishes to clarify that the Clean Data Policy does not provide for suspension of the requirements for NSR nor for RACT. The provisions at issue in the Clean Data Policy include the requirements for an attainment demonstration and other related requirements, reasonable further progress, and contingency measures.

c. Comments and Responses

Comment: One commenter stated that EPA has absolutely no authority to waive NSR or any of the CAA's other requirements for nonattainment areas merely because a nonattainment area has 3 years of clean data, nor does EPA have authority to waive mandatory requirements of the CAA such as NSR, RACT, and RFP merely because EPA or the State claims they are not needed for attainment. The commenter believes that the only way that a nonattainment area can cease implementing controls and requirements mandated for such areas is to seek and obtain redesignation to attainment, and demonstrate in the process that the controls and requirements are not needed for maintenance of standards. The CAA has explicit procedures and prerequisites for redesignating nonattainment areas to attainment (CAA sections 107(d)(3)(E) and 175A). The EPA's ''clean data'' proposal would illegally circumvent those requirements.

Response: The Clean Data policy does not waive requirements for NSR nor for RACT. However, EPA believes that ''clean data'' policies for the ozone and fine particle programs are based on a reasonable interpretation of the CAA. The Clean Data Policy is the subject of two EPA memoranda setting forth our interpretation of the provisions of the Act as they apply to areas that have attained the relevant NAAQS. The EPA also finalized the statutory interpretation set forth in the policy in a final rule, 40 CFR 51.918, as part of its Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2 (Phase 2 Final Rule). See discussion in the preamble to the rule at 70 FR 71645–71646 (November 29, 2005). The legal rationale for the Clean Data policy is explained in our Phase 2 Final Rule, in our December 14, 2004 memorandum from Stephen D. Page entitled ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards'' (Page Memo), and in our May 10, 1995 memorandum from John S. Seitz, entitled ''Reasonable Further Progress, Attainment

[16] Memorandum of December 14, 2004, from Steve Page, Director, EPA Office of Air Quality Planning and Standards to EPA Air Division Directors, ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards.'' This document is available at: *http://www.epa.gov/pmdesignations/guidance.htm.*

Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'' (Seitz memo). We adopt and reiterate those explications here.

The EPA has also explained its rationale for applying the Clean Data policy in rulemaking actions associated with nonattainment areas for the PM_{10} and 1-hour ozone standards. For rulemaking actions applying the Clean Data policy to the PM_{10} standards, see 71 FR 27440 (May 11, 2006) (Weirton, WVA), 71 FR 13021 (March 14, 2006) (Yuma, AZ), 71 FR 6352 (February 8, 2006) (Ajo, AZ). For a discussion of the legal rationale supporting rulemaking actions applying the Clean Data policy to the 1-hour ozone standards, see, for example, 67 FR 49600 (July 31, 2002); 65 FR 37879 (June 19, 2000) Cincinnati-Hamilton, Ohio-Kentucky); 61 FR 20458 (May 7, 1996) (Cleveland Akron-Lorain, Ohio); 66 FR 53094 (October 19, 2001) (Pittsburgh-Beaver Valley, Pennsylvania); 61 FR 31832 (June 21, 1996 (Grand Rapids, Michigan); 60 FR 36723 (July 18, 1995) (Salt Lake and Davis Counties, Utah); 68 FR 25418 (May 12, 2003) (St Louis, Missouri); 69 FR 21717 (April 22, 2004) (San Francisco Bay Area).

The EPA has further elaborated on its legal rationale for the Clean Data Policy in briefs filed in the 10th, 7th, and 9th Circuits, and hereby incorporates those briefs insofar as relevant here. See *Sierra Club* v. *EPA,* No. 95–9541 (10th Cir.), *Sierra Club* v. *EPA,* No. 03–2839, 03–3329 (7th Cir.), *Our Children's Earth Foundation* v. *EPA,* No. 04–73032 (9th Cir.). As stated in the policy, the attainment demonstration, RFP requirements, and contingency measure requirement are designed to bring an area into attainment. Once this goal has been achieved, it is appropriate to suspend the obligation that States submit plans to meet these goals, so long as the area continues to attain the relevant standard. The Tenth, Seventh and Ninth Circuits have all upheld EPA rulemakings applying the Clean Data Policy. See *Sierra Club* v. *EPA,* 99 F. 3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation* v. *EPA,* No. 04–73032 (9th Cir. June 28, 2005 (Memorandum Opinion).

The EPA has explained in its memoranda on the Clean Data Policy for $PM_{2.5}$ and for ozone that it is reasonable to interpret the provisions regarding RFP and attainment demonstrations, along with certain other related provisions, as not requiring further submissions to achieve attainment for so long as the area is in fact attaining the standard. Under the policy, EPA is not granting an exemption from any applicable requirement under Part D. Rather, EPA has interpreted these requirements as not applying for so long as the area remains in attainment with the standard. This is not a waiver of requirements that by their terms apply; it is a determination that certain requirements are written so as to be operative only if the area is not attaining the standard.

CAA section 172(c)(2) provides that SIP provisions in nonattainment areas must require ''reasonable further progress.'' The term ''reasonable further progress'' is defined in section 171(1) as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.'' Thus, by definition, the ''reasonable further progress'' provision requires only such reductions in emissions as are necessary to attain the NAAQS. If an area has attained the NAAQS, the purpose of the RFP requirement will have been fulfilled, and since the area has already attained, showing that the State will make RFP towards attainment will ''have no meaning at that point.'' The EPA's General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (General Preamble) 57 FR 13498, 13564 (April 16, 1992).

CAA section 172(c)(1), the requirement for an attainment demonstration, provides in relevant part that SIPs ''shall provide for attainment of the [NAAQS].'' The EPA has interpreted this requirement as not applying to areas that have reached attainment. If an area has attained the standard, there is no need to submit a plan demonstrating how the area will reach attainment. In the General Preamble (57 FR 13564), EPA stated that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached.'' See also Memorandum from John Calcagni, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' September 4, 1992, at page 6.

CAA section 172(c)(9) provides that SIPs in nonattainment areas ''[S]hall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or [EPA].''

This contingency measure requirement is inextricably tied to the reasonable further progress and attainment demonstration requirements. Contingency measures are implemented if reasonable further progress targets are not achieved, or if attainment is not realized by the attainment date. Where an area has already achieved attainment by the attainment date, it has no need to rely on contingency measures to come into attainment or to make further progress to attainment. As EPA stated in the General Preamble:

> ''The section 172(c)(9) requirements for contingency measures are directed at ensuring RFP and attainment by the applicable date.'' 57 FR 13564. Thus these requirements no longer apply when an area has attained the standard.

It is important to note that should an area attain the $PM_{2.5}$ standards based on three years of data, its obligation to submit an attainment demonstration is not waived but is only suspended. If the area then has air quality concentrations in the following year such that the area exceeds the standard for years 2 through 4, then the area's obligation to submit an attainment demonstration is back in effect.

The determination of attainment contemplated by the Clean Data Policy does not purport to be a redesignation, and thus the requirements for redesignation under section 107(d) are not applicable. Nor does the Clean Data Policy avoid or illegally circumvent the redesignation requirements of section 107 of the CAA. All of the requirements for redesignation remain in effect and must be satisfied for an area to be redesignated. *Sierra Club* v. *EPA*, 99 F.3d at 1557–1558. The Clean Data Policy is simply an interpretation of certain provisions of the CAA, whose express purpose is to achieve attainment of the standard, as not requiring SIP revisions to be made by the State for so long as the area continues to attain the standard. The policy does not purport to exempt areas from requirements that are inapplicable only if an area is redesignated to attainment. It interprets certain provisions which are written in such a way as to impose requirements only upon areas that are not attaining the NAAQS, regardless of whether they have been redesignated to attainment. The EPA has not provided for any waiver from statutory requirements that was not provided by Congress. The area at issue remains designated nonattainment, and is subject to the risk that if a violation occurs it will have to

adopt and implement reasonable further progress requirements, contingency measures, and an attainment demonstration, unless it is redesignated to attainment. In order to be redesignated to attainment, however, the area will have to satisfy all of the requirements of section 107(d)(3)(E), including the requirement for a long-term maintenance plan.

While a determination of attainment is not equivalent to a redesignation to attainment, nothing in the Act compels EPA to wait until an area meets all the requirements for redesignation before EPA makes a determination that the area is in attainment with the standard, thereby suspending the requirements for certain provisions related to attainment. Indeed, section 179(c) of the Act requires EPA to make an attainment determination within six months after an area's applicable attainment date whether or not the EPA has made a finding with respect to redesignation. The EPA's interpretation of the Act's provisions not to require, once attainment has been reached, certain plan submissions whose purpose is to assure attainment, is not at odds with the requirements for redesignation. Nor does EPA's construction of the statute adversely impact planning for maintenance. An area that is monitoring attainment, but is still designated as a nonattainment area, retains strong incentives to seek redesignation to attainment, and remains subject to the requirement to demonstrate maintenance in order to be redesignated. For a detailed discussion of the relationship of redesignation requirements and attainment determinations, see the discussions in the EPA briefs in *Our Children's Earth Foundation* v. *EPA*, supra at pp. 43–60., *Sierra Club* v. *EPA* No. 95–9541 (10th Cir.) at 29–43, and *Sierra Club* v. *EPA* Nos. 03–2839, 03–3329 (7th Cir.) at 33–44 which are contained in the docket for this rulemaking.

Comment: A commenter noted that EPA's proposal suggested that areas attaining the standard would be subject to reduced regulatory requirements. The commenter believed that EPA's interpretation should be codified in regulatory form, in order to assure that areas legally meeting the current $PM_{2.5}$ standard and those requesting redesignation be enabled to be redesignated and to benefit from the interpretation through regulation, rather than by guidance or policy.

Response: The EPA has adopted the commenter's suggested approach of codifying its Clean Data Policy interpretation for $PM_{2.5}$ in regulatory form. Section 51.1004(c). As it did for ozone in its Phase II Ozone Implementation Rule, EPA is including in this rulemaking a regulation that encapsulates the statutory interpretation that is embodied in its Clean Data Policy for $PM_{2.5}$, set forth above. As noted in the response to comment above, determinations as to whether individual areas have attained the $PM_{2.5}$ standard and thus qualify for application of the rule will be made in the context of rulemakings for those individual areas. The EPA believes, however, that encapsulating its interpretation in regulatory form will lend clarity and consistency to the process of applying its interpretation.

E. Modeling and Attainment Demonstrations

1. Background

[Section III.F.1 of November 1, 2005 proposed rule (70 FR 66007); sec 51.1007 in draft and final regulatory text]

As noted in the proposal, Section 172(c) requires States with nonattainment areas to submit an attainment demonstration. An attainment demonstration consists of: (1) Technical analyses that locate, identify, and quantify sources of emissions that are contributing to violations of the $PM_{2.5}$ NAAQS; (2) analyses of future year emissions reductions and air quality improvement resulting from already-adopted national and local programs, and from potential new local measures to meet the RACT, RACM, and RFP requirements in the area; (3) adopted emission reduction measures with schedules for implementation; and (4) contingency measures required under section 172(c)(9) of the CAA.

a. Final Rule

The requirements from the proposal are unchanged. Each State with a nonattainment area will be required to submit a SIP with an attainment demonstration that includes analyses supporting the State's proposed attainment date. States must show that the area will attain the standards as expeditiously as practicable and it must include an analysis of whether implementation of reasonably available measures will advance the attainment date.

2. Areas That Need To Conduct Modeling

[Section III.F.2 of November 1, 2005 proposed rule (70 FR 66007)]

a. Background

All nonattainment areas need to submit an attainment demonstration, but in some cases, States may not need new, local-scale modeling analyses. In the proposed rule, EPA proposed that States may use in a $PM_{2.5}$ attainment demonstration certain local, regional and/or national modeling analyses that have been developed to support Federal or local emission reduction programs, provided the modeling meets the attainment modeling criteria set forth in EPA's modeling guidance. The proposal also stated that nonattainment areas for which local, regional, or national scale modeling demonstrates the area will not attain the standard within 5 years of designation would be required to submit an attainment demonstration SIP that includes new modeling showing attainment of the standards as expeditiously as practicable.

b. Final Rule

In the final rule, EPA is reaffirming the potential use of national and/or regional modeling as part of an attainment demonstration. We are also clarifying the types of modeling analyses that may be useful as a ''primary'' modeling analysis and as a ''supplemental'' analysis. The proposal suggested that it may be appropriate, in certain circumstances, for a State to submit regional or national modeling as the sole (primary) modeling analysis in its attainment demonstration. This implies that the State would not need to conduct local modeling analyses. We wish to further define the differences between ''national'', ''regional'', and ''local'' modeling analyses. In this context, national analyses are generally those conducted by EPA in support of national or regional rules. Regional and local modeling analyses are generally those conducted by the RPOs and/or States for the purpose of developing State Implementation Plans (SIPs). EPA has conducted national scale modeling for a variety of rules and analyses. Additionally, the RPOs and many States are conducting regional and/or local scale modeling of $PM_{2.5}$ and regional haze across the country. The national scale of the EPA modeling analyses requires basic assumptions concerning local model inputs. Compared to regional or local modeling done by the States and/or RPOs, EPA modeling may, in some cases, use coarser grid resolution, use inventories that are not as refined, and model performance may be highly variable from area to area. For these reasons, national scale modeling may not always be appropriate for local area attainment demonstrations.

Therefore, we believe that regional or local modeling conducted by the States or RPOs is best suited as the primary modeling analysis for a modeled

attainment demonstration. The local modeling is more likely to meet the recommendations contained in EPA's modeling guidance. However, some areas having design values close to the standard may be projected to come into attainment within five years based on modeling analyses of national and regional emission control measures (e.g. CAIR) that are scheduled to occur through 2009. Regional scale modeling for national rules such as the Tier II motor vehicle standards, the Heavy-duty Engine standards, the Nonroad Engine standards, and CAIR indicate major reductions in $PM_{2.5}$ by 2010. A portion of these benefits will occur in the 2006–2009 $PM_{2.5}$ attainment timeframe.

Experience with past ozone attainment demonstrations has shown that the process of performing detailed photochemical grid modeling to develop an attainment demonstration can be very resource intensive for States. The EPA believes that it would be appropriate for States to leverage resources by collaborating on modeling analyses to support SIP submittals, or by making use of recent modeling analyses that are completed prior to the SIP submittal date. For this reason, EPA recognizes that States may use in a $PM_{2.5}$ attainment demonstration certain local, regional and/or national modeling analyses that have been developed to support Federal or local emission reduction programs, provided the modeling meets the attainment modeling criteria set forth in EPA's modeling guidance (described below). As with all SIPs under subpart 1, the State must demonstrate that the area will attain the $PM_{2.5}$ standards as expeditiously as practicable. The judgment of whether the modeling is appropriate for an area should be made by the State(s) and their respective EPA regional office on a case-by-case basis.

c. Comments and Responses

Comment: There were many commenters that agreed that States should be able to use EPA modeling or other national or regional modeling as a modeled attainment demonstration. One commenter recommended that the final rule require States to show that the existing modeling incorporates realistic assumptions, accurately reflects local emissions and trends, and provides adequate model performance for the local nonattainment area.

Response: We agree that national and regional modeling may be used as part of an attainment demonstration as long as it is shown to be applicable to the local area. This is consistent with the proposal where we said that existing modeling should ''meet the attainment modeling criteria set forth in EPA's modeling guidance.'' Part of the analysis to determine if existing modeling meets the criteria in the modeling guidance is to assess whether the modeling incorporates realistic assumptions, accurately reflects local emissions and trends, and provides adequate model performance for the local nonattainment area.

Comment: Some commenters thought States should be able to use EPA modeling in the absence of an analysis of the applicability of the modeling for a local nonattainment area. One commenter said that EPA should determine that States should not have to do any additional modeling analyses if the CAIR modeling showed they were expected to attain the NAAQS by 2010.

Response: While we acknowledge there may be some circumstances in which national or regional modeling would be appropriate to use without local modeling and allow for such use, we disagree that national modeling should be used in support of an attainment demonstration without further analysis of the modeling assumptions for a particular area. National scale modeling may not always be appropriate for local areas. Most often, national scale EPA modeling is best suited for use as a supplemental analysis or as part of a ''weight of evidence'' demonstration. The modeling guidance recommends supplemental analyses for all attainment demonstrations. The guidance specifically recommends the examination of other modeling studies as a supplemental analysis. The EPA modeling as well as other ''non-local'' modeling can be used for this purpose. The ''weight'' of this alternative modeling in an attainment demonstration should be guided by how well the modeling system is suited for the local nonattainment area. States should consult with their EPA regional offices for further guidance and recommendations. As such, we do not believe it to be appropriate to determine a priori that CAIR or any other modeling analyses are appropriate to use in a local attainment demonstration for any or all nonattainment areas.

Comment: Several commenters believe that States should be able to use existing EPA modeling (such as CAIR), as the basis for an extension of the area's attainment date, if it shows that the nonattainment area may not be able to attain the NAAQS by 2010. They believe that the State should not have to do additional modeling to show that they need an attainment date extension.

Response: We disagree with this comment. The CAIR modeling included national controls that are expected to be in place by 2010 (including the CAIR rule itself), as well as existing state and local controls reflected in the inventory used in the CAIR analysis. It did not include any additional local controls that could be implemented under RACT and RACM requirements for the 1997 standards that may bring the area into attainment sooner. Nonattainment areas are required to attain the NAAQS as expeditiously as practicable. Therefore, updated modeling of existing controls as well as additional local controls is needed before an attainment date extension can be granted. Additional information on attainment dates and extensions is contained in the preamble to the final rule, section II.D., and additional information on RACT and RACM requirements is contained in section II.F.

Comment: Several commenters noted an apparent inconsistency in the language concerning who would be required to perform ''new'' local-scale modeling. First, there are potentially conflicting statements in the proposal when EPA states that areas with an attainment date of 2010 will need to conduct local-scale modeling to project the estimated level of air quality improvement in accordance with EPA's modeling guidance. This conflicts with the proposed ability for States to use existing national or regional modeling as their modeled attainment demonstration. Second, a portion of a sentence was removed from the **Federal Register** version of the notice which differs from the pre-**Federal Register** version. The published version implies that all nonattainment areas would be required to submit new modeling.

Response: We agree that there are inconsistencies in the proposal preamble text. To clarify, new local-scale modeling is required for areas that are not expected to come into attainment by 2010. For other areas, there may be national or regional modeling which may be applicable to the area which shows they are likely to come into attainment. As noted earlier, national scale modeling is best suited for use as a supplemental analysis, but in some cases may be acceptable evidence that an area will attain by 2010.

Additionally, the preamble language in the **Federal Register** contained an error. A portion of a sentence was mistakenly removed, which led to some confusion. The language in the FR notice (FR page 66008) stated ''Nonattainment areas would be required to submit an attainment demonstration SIP that includes new modeling showing attainment of the

standards as expeditiously as practicable. The new modeling will need to include additional emissions controls or measures in order to demonstrate attainment.'' The language should have read, ''Nonattainment areas *for which local, regional, or national scale modeling demonstrates the area will not be in attainment of the NAAQS within 5 years of designation* would be required to submit an attainment demonstration SIP that includes new modeling showing attainment of the standards as expeditiously as practicable. The new modeling will need to include additional emissions controls or measures in order to demonstrate attainment.'' This should clarify that States that cannot show attainment within 5 years will need to develop new modeling analyses which contain additional control strategies which show how and when they expect to attain the $PM_{2.5}$ NAAQS.

Comment: One commenter maintained that relying on large-scale regional modeling alone may allow for $PM_{2.5}$ hot spots (i.e. small unmonitored areas projected to exceed the standard) to exist past the attainment date.

Response: We agree that nonattainment areas with potential hotspot issues (relatively high concentrations and/or gradients of primary $PM_{2.5}$) should not rely exclusively on regional modeling. The EPA's attainment demonstration modeling guidance attempts to address several aspects of hotspot issues in both monitored and unmonitored areas [17]. The modeled attainment tests contained in EPA's modeling guidance are primarily monitor based tests. Ambient data is combined with the model predicted relative change in PM components to determine if attainment of the standards is likely in the future. There are several aspects of the attainment test. In most cases, States will run a photochemical grid model to determine the future year predicted $PM_{2.5}$ concentrations at monitors. The modeling guidance generally recommends that for urban scale $PM_{2.5}$ modeling, the State performs modeling analyses at 12 kilometer grid resolution or finer. There is an additional component to the attainment test for areas that have measured relatively high concentrations and/or gradients of primary $PM_{2.5}$ at monitors. In these cases, we recommend running a Gaussian dispersion model for potential primary PM sources, to determine the local impact of changes in primary PM emissions (from the modeled sources) on predicted concentrations at the monitor(s).

In addition, we describe an ''unmonitored area analysis'' which uses interpolated ambient data combined with gridded model outputs to examine whether potential violations of the NAAQS may occur in unmonitored areas. If potential violations are indicated, we recommend further analysis of the problem through additional local modeling. Options for State action to address such a situation could include imposition of reasonably available control technology to reduce emissions, or the deployment of an air quality monitor to further characterize the problem.

We believe that the combination of these model-based tests will adequately determine whether attainment of the standards is likely by the attainment date. We also believe that these tests address the issue of hotspots by recommending a combination of photochemical modeling, dispersion modeling of local sources, and additional monitoring and/or emissions controls.

3. Modeling Guidance

[Section III.F.3 of November 1, 2005 proposed rule (70 FR 66008)]

a. Background

Section 110(a)(2)(K)(i) states that SIPs must contain air quality modeling as prescribed by the Administrator for the purpose of predicting the effect of emissions on ambient air quality. The procedures for modeling $PM_{2.5}$ as part of an attainment SIP are contained in EPA's ''Guidance for Demonstrating Attainment of Air Quality Goals for $PM_{2.5}$ and Regional Haze.'' The proposal summarized several of the chapters in a draft version of the modeling guidance.

b. Final Rule

A draft of the $PM_{2.5}$ attainment demonstration and regional haze modeling guidance has now been revised (September 2006) and is available at *http://www.epa.gov/ttn/scram/guidance_sip.htm*. The draft $PM_{2.5}$ attainment demonstration and regional haze guidance has been incorporated into the ozone modeling guidance and is now called ''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for the 8-Hour Ozone and $PM_{2.5}$ NAAQS and Regional Haze''. The final version of the modeling guidance will be available at the same location in the near future.

The revised draft $PM_{2.5}$ modeling guidance document is very similar to the previous draft version, although there were several changes and updates. Among them are new methods in treating $PM_{2.5}$ species components as part of the $PM_{2.5}$ attainment test; new methods for determining potential future year violations in unmonitored areas; new procedures for handling potential $PM_{2.5}$ ''hotspots''; and an increased reliance on supplemental analyses, including ''weight of evidence'' analyses. The EPA notes that the $PM_{2.5}$ attainment demonstration modeling guidance that we have released is separate from the Agency's future hot-spot modeling guidance for transportation conformity purposes.[18]

The modeling guidance describes how to estimate whether a control strategy to reduce emissions of particulate matter and its precursors will lead to attainment of the annual and 24-hour $PM_{2.5}$ NAAQS. Part I of the guidance describes a ''modeled attainment test'' for the annual and 24-hour $PM_{2.5}$ NAAQS. Both tests are similar. The output of each is an estimated future design value consistent with the respective forms of the NAAQS. If the future design value does not exceed the concentration of $PM_{2.5}$ specified in the NAAQS, then the primary modeled test is passed. The modeled attainment test applies to locations with monitored data.

A separate test is recommended to examine projected future year $PM_{2.5}$ concentrations in unmonitored locations.[19] Interpolated $PM_{2.5}$ ambient data, combined with modeling data, is used to predict $PM_{2.5}$ concentrations in unmonitored areas. The goal of this analysis is to identify areas without monitors that may be violating the $PM_{2.5}$ NAAQS, often due to high levels of primary $PM_{2.5}$ (both now and in the future). The details of the analysis are contained in the final modeling guidance.

The guidance also discusses modeling $PM_{2.5}$ at monitors where high concentrations of primary $PM_{2.5}$ are measured. In these cases, it may be beneficial to model the primary component of the $PM_{2.5}$ with a Gaussian dispersion model. Dispersion models are better able to capture the influence

[17] The recommendations contained in the modeled attainment demonstration guidance are separate from the Agency's future hot-spot modeling guidance for transportation conformity purposes.

[18] In the March 10, 2006, final transportation conformity rule (71 FR 12468), EPA committed to develop $PM_{2.5}$ and PM_{10} quantitative hot-spot modeling guidance for transportation conformity determinations for highway and transit projects of local air quality concern.

[19] Application of the unmonitored area analysis is limited to locations which are appropriate to allow the comparison of predicted $PM_{2.5}$ concentrations to the NAAQS, based on $PM_{2.5}$ monitor siting requirements and recommendations.

of primary PM sources where large concentration gradients may exist. Grid models spread out the PM emissions to the size of the grid (typically 4 or 12 km). This makes it difficult to judge the benefits of control strategies that may affect primary PM sources. The final modeling guidance recommends procedures for applying dispersion models in these situations.

The guidance also recommends the submittal of supplemental analyses as part of all attainment demonstrations. Supplemental analyses are modeling, emissions, and/or ambient data analyses that are submitted as part of a SIP, in addition to the primary modeled attainment test. The evaluation of supplemental analyses when the predicted concentrations in the primary attainment test are close to the NAAQS (slightly above or slightly below) is called a weight-of-evidence (WOE) analysis. This is simply a collection of evidence that aims to show that attainment of the standard is likely. The final version of the modeling guidance puts more emphasis on the submittal of supplemental analyses than in previous versions.

Part II of the guidance describes how to apply air quality models to generate results needed by the modeled tests for attainment. This includes developing a conceptual description of the problem to be addressed; developing a modeling/analysis protocol; selecting an appropriate model to support the demonstration; selecting appropriate meteorological episodes or time periods to model; choosing an appropriate area to model with appropriate horizontal/vertical resolution; generating meteorological and air quality inputs to the air quality model; generating emissions inputs to the air quality model; evaluating performance of the air quality model; and performing diagnostic tests. After these steps are completed, the model is used to simulate the effects of candidate control strategies.

Comment: Several commenters were supportive of the weight of evidence concept. They said that $PM_{2.5}$ modeling is inherently more uncertain than previous ozone modeling and the modeling guidance should reflect that. One commenter noted that weight of evidence demonstrations should be ''unbiased'', meaning that States should use all relevant analyses and not only information that helps their case.

Response: The EPA agrees with these comments. The final modeling guidance recommends supplemental analyses (including weight of evidence) for all attainment demonstrations. All States should submit modeling, ambient data, and emissions analyses in addition to the primary modeling demonstration. A weight of evidence analysis is needed if the predicted future year $PM_{2.5}$ concentrations are slightly higher or slightly lower than the NAAQS.

We also agree that a weight of evidence demonstration should include all relevant information, including analyses which support attainment and those that do not. The idea of the analysis is to ''weigh'' the evidence, both good and bad. That cannot be fairly done if some evidence is not presented.

Comment: Several commenters suggested that a modeled attainment demonstration should not be specifically required. Instead they suggest that all demonstrations should be weight of evidence demonstrations. This would include different analyses of ambient data, trends, and modeling. But due to the uncertainties in the current $PM_{2.5}$ models and emissions data, modeling would be but one part of a broader weight of evidence approach.

Response: We disagree with this comment. Model results should be the primary analysis of an attainment demonstration. Regardless of current uncertainties in the $PM_{2.5}$ models and emissions, models are the only tool that can predict future concentrations of $PM_{2.5}$. The uncertainties in the model inputs and formulation should be taken into account when evaluating the results. We agree that a broad analysis of modeling, ambient data and emissions trends should be part of the attainment demonstration. This is reflected in the final modeling guidance.

4. Modeled Attainment Test

[Section III.F.4 of November 1, 2005 proposed rule (70 FR 66008)]

a. Background

The proposal described the nature of the attainment tests for the annual average and 24-hour average $PM_{2.5}$ NAAQS contained within the modeling guidance. Both tests use monitored data to estimate current air quality. The attainment test for a given standard is applied at each monitor location within or near a designated nonattainment area for that standard. There is also an additional attainment test to be performed in unmonitored areas. Models are used in a relative sense to estimate the response of measured air quality to future changes in emissions. Future air quality is estimated by multiplying current monitored values times modeled responses to changes in emissions. Because $PM_{2.5}$ is a mixture of chemical components, the guidance recommends using current observations and modeled responses of major components of $PM_{2.5}$ to estimate future concentrations of each component. The predicted future concentration of $PM_{2.5}$ is the sum of the predicted component concentrations.

b. Final Rule

The nature of the $PM_{2.5}$ attainment tests is unchanged. The final modeling guidance recommends refinements to the test and discusses the treatment of individual $PM_{2.5}$ species. The speciated modeled attainment test (SMAT) that was used to estimate future $PM_{2.5}$ concentrations for CAIR has been (mostly) implemented in the final guidance. Among the new recommendations is to better account for the known differences between the $PM_{2.5}$ Federal Reference Method (FRM) measurements and the $PM_{2.5}$ speciation measurements. For example, it is recommended to account for the volatilization of nitrate from the FRM filters and to account for uncertainties in organic carbon measurements by employing an ''organic carbon by mass balance'' technique. This assumes that all remaining mass not accounted for by other species is organic carbon mass. Additional details are contained in the modeling guidance.

The guidance also recommends, where necessary, to spatially interpolate $PM_{2.5}$ species data to estimate the species concentrations at FRM sites. It is necessary to estimate species concentrations when there are no species measurements at FRM sites. Several techniques can be used to estimate species concentrations. Spatial interpolation techniques may be useful in many areas. In other cases, it may be adequate to assume that data from a speciation monitor may be representative of multiple FRM monitors. It is particularly important to develop credible techniques to estimate species concentrations at the locations of the highest FRM monitors.

The guidance lists several techniques that can be used. The EPA will provide software which will apply the modeled attainment test, using ambient data and model outputs. Additionally, the software will interpolate the $PM_{2.5}$ species data to allow application of SMAT for all FRM monitors. The software will be available at the same location as the final modeling guidance (*http://www.epa.gov/scram001/guidance_sip.htm*).

Ultimately, it is up to the States to determine the best method to represent the $PM_{2.5}$ species concentrations, subject to EPA's review and approval. These estimates are needed to perform the modeled attainment test.

c. Comments and Responses

Comment: Several commenters were concerned that interpolation of $PM_{2.5}$ species concentrations may not be appropriate in certain areas or situations. The concentrations can vary significantly between urban and rural areas and even between nearby urban areas. One commenter suggested that it might be useful to use older field study measurements to derive current species concentrations. Another commenter suggested that it might be reasonable to assume that speciation measurements were representative of nearby FRM sites.

Response: We agree that interpolations of species data may not always be the best way to estimate species concentrations at FRM sites. The modeling guidance lists several different possible techniques. States should review their data and situation and choose the most reasonable methodology to estimate species concentrations. Nonattainment areas that don't have speciation measurements at the highest FRM site(s) need to be especially careful. The result of the speciated attainment test can be heavily influenced by the assumed species concentrations at the highest FRM sites. The attainment test will be more straightforward in areas with speciation monitors at the highest FRM sites. States are also encouraged to place speciation monitors at the highest FRM sites. This will aid in future assessments of attainment and ambient trends.

5. Multi-Pollutant Assessments

[Section III.F.5 of November 1, 2005 proposed rule (70 FR 66009)]

a. Background

The formation and transport of $PM_{2.5}$ is in many cases closely related to the formation of both regional haze and ozone. There is often a positive correlation between measured ozone and secondary particulate matter. Many of the same factors affecting concentrations of ozone also affect concentrations of secondary particulate matter. For example, similarities exist in sources of precursors for ozone and secondary particulate matter. Emissions of NO_X may lead to formation of nitrates as well as ozone. Sources of VOC may be sources or precursors for both ozone and organic particles. Presence of ozone itself may be an important factor affecting secondary particulate formation. The proposal recommended multi-pollutant assessments for $PM_{2.5}$ attainment demonstrations. A multi-pollutant assessment, or one-atmosphere modeling, is conducted with a single air quality model that is capable of simulating transport and formation of multiple pollutants simultaneously. This type of model simulates the formation and deposition of $PM_{2.5}$, ozone, and regional haze components, and it includes algorithms simulating gas phase chemistry, aqueous phase chemistry, aerosol formation, and acid deposition.

b. Final Rule

The recommendation to conduct multi-pollutant assessments remains unchanged. It is recommended to model the impacts of future year control strategies on $PM_{2.5}$, ozone, and regional haze. It may not always be possible or convenient to do so, but it can be beneficial to the strategy development process.

$PM_{2.5}$ control strategies will have an impact on regional haze, and will possibly impact ozone. Even if high ozone and high $PM_{2.5}$ concentrations don't typically occur during the same time of the year, controls that affect precursors to $PM_{2.5}$ may also affect ozone (e.g. NO_X). The SIP submittal dates for $PM_{2.5}$, ozone, and regional haze do not currently line up. The $PM_{2.5}$ SIPs are due almost 1 year later than ozone. But States can still do modeling analyses that can provide information for multiple pollutants. States can use one-atmosphere models that are capable of simulating both ozone and $PM_{2.5}$. They can also try to use consistent meteorological fields and emissions inventories so that the same control strategies are relatively easy to evaluate for both ozone and $PM_{2.5}$. Modeling the same future year(s) for $PM_{2.5}$ and ozone can also make it easier to evaluate the impacts of controls on both pollutants.

It should be noted that there are no specific modeling requirements other than the recommendation to try to harmonize the ozone, $PM_{2.5}$, and regional haze analyses whenever possible.

c. Comments and Responses

Comment: One commenter suggests that multi-pollutant assessments may not be beneficial because their area experiences winter $PM_{2.5}$ exceedances and summer ozone exceedances.

Response: We disagree with the comment. Even in situations where high $PM_{2.5}$ and ozone don't occur during the same time of year, multi-pollutant assessments may be helpful. NO_X controls that may be needed to reduce nitrates in the winter are likely to have an impact on ozone in the summer. As well, changes in VOCs may have an impact on both $PM_{2.5}$ and ozone. Running potential control strategies through the same modeling platform for ozone, $PM_{2.5}$, and regional haze may allow the development of optimized strategies.

6. Which Future Year(s) Should Be Modeled?

[Section III.F.6 of November 1, 2005 proposed rule (70 FR 66009)]

a. Background

Modeling analyses consist of base year modeling and future year modeling. The attainment test examines the change in air quality between the base and future years. The proposal recommended, where possible, future modeling years should be coordinated so that a single year can be used for both $PM_{2.5}$ and ozone modeling. This coordination will help to reduce resources expended for individual modeling applications for $PM_{2.5}$ and ozone and will facilitate simultaneous evaluation of ozone and PM impacts.

Although there is some flexibility in choosing the future year modeling time periods, unless the State believes it cannot attain the standards within 5 years of the date of designation and must request an attainment date extension, the choice of modeling years for $PM_{2.5}$ cannot go beyond the initial 5 attainment period. Attainment date extensions will only be granted under certain circumstances. Among other things, the State must submit an attainment demonstration showing that attainment within 5 years of the designation date is impracticable.

b. Final Rule

Further information is now known concerning the modeling years for ozone. Moderate nonattainment areas are presumed to be modeling 2009. This is consistent with the last year of the 5 year period allowed under Subpart I for $PM_{2.5}$. Therefore, it is logical to presume that areas that are able to attain the $PM_{2.5}$ NAAQS within 5 years will model a future year of 2009. Areas that won't be able to attain the standard in 5 years will need to request an attainment date extension (of up to 5 additional years).

The NAAQS must be attained as expeditiously as practicable. Therefore, attainment date extensions must contain modeling analyses to justify the extension. Details of the required analyses are contained in the RACT and RACM sections of the final rule. See section F for more details.

F. Reasonably Available Control Technology and Reasonably Available Control Measures

This section of the preamble discusses the final rule requirements for RACT and RACM. In order to explain EPA's

approach in the final rule more clearly, we first discuss the statutory and regulatory background for the RACT and RACM requirements, and we then explain the key options and interpretations upon which we took comment in the proposal. Thereafter, we discuss significant comments we received on the proposal and provide brief responses to those comments. [Additional comments and responses appear in the RTC for this final rule located in the docket.] Most of the comments received on this topic addressed the three options EPA proposed for the RACT requirement, the relationship between the RACT requirement and EPA's Clean Air Interstate Rule (CAIR), and the control measures to be required or considered for RACT and RACM.

1. Background on Statutory Requirements for RACT and RACM

Subpart 1 of Part D of the CAA (sections 171–179B) applies to all designated nonattainment areas. Section 172 of this subpart includes general requirements for all attainment plans.

Notably, Congress provided EPA and States a great deal of deference for determining what measures to include in an attainment plan. Specifically, Section 172(c)(1) requires that each attainment plan ''provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology), and shall provide for attainment of the national primary ambient air quality standards.'' By including language in Section 172(c)(1) that only ''reasonably available'' measures be considered for RACT/RACM, and that implementation of these measures need be applied only ''as expeditiously as practicable,'' Congress clearly intended that the RACT/RACM requirement be driven by an overall requirement that the measure be ''reasonable.'' Thus, the rule of ''reason'' drives the decisions on what controls to apply, what should be controlled, by when emissions must be reduced, and finally, the rigor required in a State's RACT/RACM analysis. For example, we previously stated that the Act ''does not require measures that are absurd, unenforceable, or impractical'' or result in ''severely disruptive socioeconomic impacts'' 55 FR 38327. Moreover, we interpret the term ''reasonably available'' to allow States to consider both the costs and benefits of applying the measure, and whether the measure can be readily and effectively implemented without undue administrative burden. 66 FR 26969.

We also interpret the ''reasonably available control measures'' in these provisions as referring to measures of any type that may be applicable to a wide range of sources, whereas the parenthetical reference to ''reasonably available control technology'' refers to measures applicable to stationary sources. RACM can apply to mobile sources, areas sources and stationary sources not already subject to $PM_{2.5}$ RACT requirements. Thus, RACT is a type of RACM specifically designed for stationary sources. As noted above, States are required to implement RACM and RACT ''as expeditiously as practicable'' as part of attainment plans designed to attain the standards.[20]

Section 172 does not include any specific applicability thresholds to identify the size of sources that States and EPA must consider in the RACT and RACM analysis. Nor, does Section 172 specifically indicate which pollutant(s) or precursor(s) must be subject to RACM or RACT measures to attain the NAAQS. Other pollutant-specific provisions of the CAA do include applicability thresholds pertaining to attainment plan requirements for NAAQS and precursor pollutants. For example, subpart 2 of part D, which establishes additional requirements for ozone nonattainment areas, establishes thresholds ranging from 100 to 10 tons per year for requirements applicable to ''major sources'' or ''major stationary sources,'' depending on the area's classification or level of nonattainment. Subpart 4 of part D, which provides additional plan requirements for PM_{10} nonattainment areas, establishes thresholds of 100 and 70 tons per year for requirements applicable to a ''major source'' or ''major stationary source.''

Moreover, subpart 1, unlike subparts 2 and 4, does not identify specific source categories for which EPA must issue control technology documents or guidelines, or identify specific source categories for State and EPA evaluation during attainment plan development. For ozone, subpart 2 contains a list of specific requirements for control techniques guidelines (CTGs) and alternative control techniques (ACT) documents. For PM_{10}, section 190 of the CAA (in subpart 4) places particular emphasis on specific sources of area emissions, but does not identify specific stationary source categories for which RACT guidance must be issued. Section 190 requires EPA to develop RACM guidance documents for residential wood combustion, silvacultural and agricultural burning, and for urban fugitive dust control.

2. What Is the Overall Approach To Implementing RACT and RACM in the Final Rule?

a. Background for RACT

Since the 1970s, EPA has interpreted RACT to mean ''the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility'' as well as other considerations.[21] Presumptive RACT has been described as the norm achievable by the source category.[22]

Section 110 of the 1970 Clean Air Act required States to develop SIPs providing for attainment of the NAAQS by 1975 or 1977. A number of areas were having difficulty with developing attainment plans, particularly for the ozone standard. In response to the implementation needs of this time period, EPA introduced the term ''RACT'' in a 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management to Regional Administrators, ''Guidance for Determining Acceptability of SIP Regulations in Non-attainment Areas'' (Dec. 9, 1976). In this early guidance relating to the acceptability of SIP regulations, we indicated that our overriding concern in approving SIPs was attaining the particular NAAQS as expeditiously as practicable through reasonably available control technology and other reasonably available control measures. ''The basis for fully approving state-submitted SIP regulations continues to be demonstrated attainment and maintenance of all national ambient air quality standards as expeditiously as practicable,'' the memo stated.

The 1977 Clean Air Act amendments added Part D to Title I of the Act, and for the first time the Act specifically called for EPA to designate nonattainment areas and for SIPs to require RACT and RACM in those nonattainment areas. In a 1979 **Federal**

[20] Under the Tribal Air Rule (TAR), requirements for RACT and RACM may be considered to be severable elements of implementation plan requirements for Tribes.

[21] See, 44 FR 53782, September 17, 1979, and 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management to Regional Administrators, ''Guidance for Determining Acceptability of SIP Regulations in Non-attainment Areas'' (Dec. 9, 1976).

[22] See e.g. Workshop on Requirements for Non-attainment Area Plans—Compilation of Presentations (OAQPS No. 1.2–103, revised edition April 1978).

Register notice, EPA noted its view that Congress adopted EPA's pre-existing conception of RACT in the 1977 amendments. (44 FR 53782, September 17, 1979). Also during the late 1970s, EPA developed a number of new control techniques guideline (CTG) documents as directed in the 1977 amendments. These CTGs provided States with information on controls for a number of categories of sources emitting VOCs, and recommended a ''presumptive norm'' for State RACT determinations based on the control levels achievable by sources in a given industry. CTGs reduced the burden on States by eliminating the need for each State to develop its own technical support for implementing the RACT requirement. Since the CTG-recommended controls were based on general capabilities of an industry, EPA in the 1979 guidance (44 FR 53782) urged States in setting RACT to judge the feasibility of the recommended controls on particular sources, and to adjust accordingly.

As noted above, EPA's early guidance related to the RACT requirement indicated that our overriding concern in approving State RACT requirements was attaining the particular NAAQS. We initially required States to apply RACT to qualify for attainment extensions, and in some cases, for plans that could not demonstrate attainment.

During the 1980s, EPA implemented the RACT requirements with a number of CTGs and guidance documents. These materials were aimed at addressing the attainment deadlines of 1982 and 1987 under the 1977 Clean Air Act amendments. During this time, EPA, for pollutants other than ozone, considered RACT to be dependent upon reductions needed for attainment as expeditiously as practicable. For ozone, where the State performed photochemical grid modeling, the approach was the same, but where the State used less sophisticated tools, we considered RACT to be independent of whether the controls were needed to reach attainment as expeditiously as practicable. We took this alternate approach because of concerns related to the precision of modeling techniques. In other words, in those cases, we required that a stationary source of the requisite type and size be subject to RACT, whether or not such controls were actually demonstrated to be necessary for the area to attain by its specified date. (44 FR 20375–20376, April 4, 1979)

Congress followed a similar approach in the 1990 amendments to the CAA for purposes of the ozone NAAQS in the subpart 2 provisions added at that time. For example, section 182(b)(2) requires the imposition of RACT controls for all VOC source categories covered by a CTG and for all other major stationary sources of VOC located within certain nonattainment areas. Thus, Congress required these controls without allowing for an area-specific demonstration by the State that the area needed the controls for attainment as expeditiously as practicable. Extensive discussion of this requirement appeared in the 1992 general preamble (57 FR 13541), in which EPA provided guidance for implementation of the ozone NAAQS.

Notably, Congress did not significantly amend the generally applicable provisions for nonattainment areas that appear in subpart 1 of Part D in 1990. This indicates that Congress intended that the Agency retain the authority to interpret the generally applicable nonattainment area plan requirements of section 172(c), including the RACT and RACM requirements, in the way that is most appropriate for new NAAQS that are subject to subpart 1. As discussed below, EPA has determined that an approach to the RACT requirement in which RACT varies in different nonattainment areas based on the reductions needed for attainment as expeditiously as practicable, is appropriate for implementation of the $PM_{2.5}$ NAAQS. We believe that the improved ability to model air quality impacts of emissions controls allows for this approach.

b. Proposed Options for RACT

The EPA proposed and requested comment on three alternative approaches for interpretation of the RACT requirement of section 172(c)(1) for implementation of the $PM_{2.5}$ NAAQS. The EPA proposed these approaches in order to evaluate which method would best ensure that States consider and adopt RACT measures for stationary sources in a way that is consistent with the overarching requirement to attain the standards as expeditiously as practicable, while providing flexibility for States to focus regulatory resources on those sources of emissions that contribute most to local $PM_{2.5}$ nonattainment.

Under the first proposed alternative, EPA would require States to conduct a RACT analysis and to identify and require reasonably available controls for all affected stationary sources in the nonattainment area, comparable to the implementation of RACT provided in subpart 2 governing implementation of the 1-hour ozone NAAQS. Under this option, covered sources would be required to apply reasonable available controls considering technical and economic feasibility, and there would be no opportunity for States to excuse stationary sources from control on the basis that the emissions reductions from those controls would not be necessary to meet RFP requirements or to reach attainment. Under this alternative, EPA proposed to limit the universe of sources for which States must conduct a RACT analysis and impose RACT controls, by providing an applicability threshold based upon the amount of emissions potentially emitted by the sources. Under this first option, EPA requested comment on a number of alternative emissions applicability thresholds.

Under the second proposed alternative, EPA would require States to conduct a RACT analysis and to identify reasonably available controls for all affected stationary sources. Under this option, however, States could thereafter determine that RACT does not include controls that would not otherwise be necessary to meet RFP requirements or to attain the $PM_{2.5}$ NAAQS as expeditiously as practicable.[23] Under this approach, RACT would be determined as part of the broader RACM analysis and identification of all measures—for stationary, mobile, and area sources—that are technically and economically feasible, and that would collectively contribute to advancing the attainment date.[24] Because RACT and RACM are considered together under this alternative, we did not propose emissions threshold options for evaluation of stationary source RACT. In addition, consistent with existing policies, States would be required to evaluate the combined effect of reasonably available measures to determine whether application of such measures could advance the attainment date by at least one year.[25]

The third proposed alternative, EPA's preferred option in the proposal, combined the first two options and is similar to the RACT approach adopted in the final implementation rule for the 8-hour ozone program. Under the third option, EPA would require States to conduct a RACT analysis and to require reasonably available controls for all affected stationary sources in

[23] Under the Tribal Air Rule (TAR), requirements for RACT and RACM may be considered to be severable elements of implementation plan requirements for Tribes.

[24] In *Sierra Club* v. *EPA*, 294 F.3d 155 (D.C. Cir. 2002), the court stated in upholding EPA's statutory interpretation of RACM that the Act does not compel a state to consider a measure without regard to whether it would expedite attainment.

[25] In this notice, where we use the shorthand phrase ''advance the attainment date,'' it means ''advance the attainment date by one year or more.''

nonattainment areas with attainment dates more than 5 years from the date of designation. For areas with an attainment date within 5 years of designation (e.g. by April 5, 2010 for areas with an effective date for designation of April 5, 2005), EPA would require RACT as under the second proposed alternative, in which RACT would be determined as part of the broader RACM analysis. For these areas, States could determine that RACT does not include controls that would not otherwise be necessary to meet RFP requirements or to attain the $PM_{2.5}$ NAAQS as expeditiously as practicable. The same proposed suboptions with respect to the size of sources for consideration under the first alternative were also included under this alternative.

c. Proposed Approach for RACM

The EPA proposed and asked for comment on one approach for interpreting the RACM requirement for $PM_{2.5}$. The EPA based the proposal on the approach that we adopted for other NAAQS implementation programs. Under this approach, a State provides a demonstration in its SIP that it adopted all reasonably available measures needed to meet RFP requirements and to attain the standard as expeditiously as practicable and that no reasonably available additional measures would advance the advance the attainment date by at least 1 year or would be necessary to meet the RFP requirement for the area.[26]

Under section 172(a)(2), the state implementation plan must provide for a nonattainment area to attain as expeditiously as practicable, but no later than 5 years after the effective date of designation of the area (e.g., no later than April 2010 for the final designations effective April 2005). The statute thus creates a presumption for attainment within 5 years of designation unless certain statutory criteria are met for an extension of the attainment date. Under the proposed approach to RACM for $PM_{2.5}$, each State would evaluate available measures for sources of $PM_{2.5}$ or its regulatory precursors in the area to determine if reasonable measures were needed to meet the RFP requirement or to achieve attainment as expeditiously as practicable. If modeling of all RACM and other state, regional and federal measures indicates that the State will not be able to demonstrate attainment within 5 years after designation based upon the severity of nonattainment in that area or the availability or feasibility of implementing controls in that area, then the State may request an attainment date extension. We proposed that under these circumstances, the EPA could extend the attainment date for a period of 1 to 5 years, when the State shows that it will implement all RACT and RACM as expeditiously as practicable, has met its obligation to address intrastate pollution transport from sources within its jurisdiction, and still needs additional time to attain.

In the proposed rule, the EPA also took comment on the following overall steps for implementing the statutory requirement for RACM.

(1) *Identification of measures.* The State would begin the process of determining RACM by identifying all available control measures for all sources of $PM_{2.5}$ and its precursors in the nonattainment area. The RACM can apply to mobile sources, area sources, and stationary sources.

(2) *Evaluation of measures.* After the State identifies the universe of available measures for the sources in the area, the State would evaluate them to determine whether implementation of such measures is technically and economically feasible, and whether the measure will contribute to advancing the attainment date.

(3) *Adoption of measures.* The State would adopt all reasonably available measures for the area consistent with meeting the applicable RFP requirements and attaining the NAAQS as expeditiously as practicable, in accordance with applicable policy and guidance for attainment demonstrations. We would then approve or disapprove the State's plan through notice and comment rulemaking. We also noted that in reviewing the State's selection of measures for RACM, or determining that certain measures are not RACM, EPA may independently supplement the rationale of the State or provide an alternative reason for reaching the same conclusion as the State.

c. Final Rule

The EPA carefully considered our interpretation of section 172(c)(1) for the $PM_{2.5}$ NAAQS. Because of the variable nature of the $PM_{2.5}$ problem in different nonattainment areas, which may require States to develop attainment plans that address widely disparate circumstances (e.g., different source types and mixes, different precursors and mixes of precursors, and different meteorological conditions), we determined that the regulations implementing the $PM_{2.5}$ NAAQS should provide for a great degree of flexibility with respect to the RACT and RACM controls.

Selected approach to RACT and RACM. The final rule reflects EPA's decision to select option 2 for RACT and to require a combined approach to RACT and RACM. Under this approach, RACT and RACM are those measures that a State finds are both reasonably available and contribute to attainment as expeditiously as practical in the specific nonattainment area.

By definition, measures that are not necessary either to meet the RFP requirement, or to help the area attain the NAAQS as expeditiously as practicable, are not required RACT or RACM for such area. The EPA believes that this approach provides the greatest flexibility to a State to tailor its SIP control strategy to the needs of a particular $PM_{2.5}$ nonattainment area, but it may require the State to conduct a more detailed analysis to identify the most effective RACT/RACM strategy to attain the NAAQS.

During the comment period, commenters raised concerns that this approach may be overly burdensome on States because of the number of potential control measures a State would need to consider. Today, we clarify that although the State must conduct a thorough analysis of reasonably available measures, States need not analyze every conceivable measure, as explained in the guidance below. Instead, ''reason'' should drive States identification of potential measures, but States should remain mindful of the public health risks of $PM_{2.5}$. As long as a State's analysis is sufficiently robust in considering potential measures to ensure selection of all appropriate RACT and RACM, and the State provides a reasoned justification for its analytical approach, we will consider approving that State's RACT/RACM strategy.

Guidance on State analysis to identify RACT, RACM and appropriate attainment date. A State must consider RACT and RACM for all of its nonattainment areas. However, EPA believes that if the State projects that an area will attain the standard within 5 years of designation as a result of existing national measures (i.e. projected to have a design value of 14.5 or lower), then the State may conduct a limited RACT and RACM analysis that does not involve additional air quality modeling. A limited analysis of this type would involve the review of reasonably available measures, the estimation of potential emissions

[26] In the context of the PM_{10} NAAQS, EPA has concluded that ''advancement of the attainment date'' should mean an advancement of at least one calendar year. *See* State Implementation Plans; General Preamble for the Implementation of Title I of the CAA Amendments of 1990, 57 FR 12498 (April 16, 1992). *See also Sierra Club* v. *EPA,* 294 F.3d 155 (D.C. Cir. 2002).

reductions, and the evaluation of the time needed to implement these measures. If the State could not achieve significant emissions reductions during 2008 due to time needed to implement the potential measures or other relevant factors, then the State and EPA could conclude that there are no further reasonably available control measures for that area that would advance the attainment date by one year or more relative to the presumptive outer limit for attainment dates, i.e., 5 years from designation. In lieu of conducting air quality modeling to assess the impact of potential RACT and RACM measures, States may consider existing modeling information to determine the magnitude of emissions reductions that could significantly affect air quality and potentially result in attaining prior to 2010 (e.g. in 2009 based on 2006–8 air quality data). If the State, in consultation with EPA, determines from this initial, limited RACT and RACM analysis that the area may be able to advance its attainment date through implementation of reasonable measures, then the State would conduct a more detailed RACT and RACM analysis, including appropriate air quality modeling analyses, to assess whether it can advance the attainment date.

In general, the combined approach to RACT and RACM in the final rule includes the following steps: (1) Identification of potential measures that are reasonable; (2) modeling to identify the attainment date that is as expeditious as practicable; and (3) selection of RACT and RACM.

Identification of potential measures. The State's review of potential measures must be sufficient to identify all appropriate RACT and RACM. As stated previously, inherent to RACT/RACM is the basic requirement that the measure be ''reasonable.'' A State need not evaluate measures in its RACM/RACT analysis that it determines are unreasonable such as measures that are ''absurd, unenforceable, or impractical'' or that would cause ''severely disruptive socioeconomic impacts, (e.g. gas rationing and mandatory source shutdowns); such measures are not required by the Act. 55 FR 38327.

As we also stated earlier, a State's RACT/RACM analysis not only involves an assessment about what emissions sources to control and to what level, but also a judgment as to when it is reasonable to require a sector to comply with a given measure. Accordingly, if the State or Federal rules already heavily regulate a given sector, it is reasonable for the State to first look to unregulated parts of the sector for RACT/RACM measures, especially, in light of costs already realized by the regulated sector. A State may conclude that it is unreasonable to further regulate the industry, or that it is only reasonable to impose measures in the latter years of the attainment plan.

Finally, the State should use reason in the extent of its efforts to identify potential control measures. For example, if a review of monitoring data and modeling studies indicates that reductions in SO_2 are much more effective in reducing ambient $PM_{2.5}$ than reductions in other pollutants, we expect that the State will more vigorously identify RACT/RACM measures for SO_2 than for other pollutants. Conversely, if reductions in a given pollutant, even in large quantities, would have trivial impacts on $PM_{2.5}$, less rigor is needed in the State's assessment of controls for that pollutant, because such controls could not contribute to advancing the attainment date. Likewise, where reducing emissions of a pollutant is effective in reducing ambient $PM_{2.5}$, if the emissions inventory for that pollutant is dominated by a given type of emissions source, then it would be appropriate to focus the analysis on measures for that segment of the inventory. No RACT/RACM analysis is needed for pollutants that are not attainment plan precursors for a particular $PM_{2.5}$ nonattainment area.

As supporting information for identification of RACT and RACM, the State ordinarily provides data on technologically feasible control measures:

—A list of all emissions source categories, sources and activities in the nonattainment area (for multi-State nonattainment areas, this would include source categories, sources and activities from all states which make up the area)

—For each source category, source, or activity, an inventory of direct $PM_{2.5}$ and precursor emissions;

—For each source category, source, or activity, a list of technologically feasible emission control technologies and/or measures [27]

—For each technologically feasible emission control technology or measure, the State should provide the following information: (1) The control efficiency by pollutant; (2) the possible emission reductions by pollutant; (3) the estimated cost per ton of pollutant reduced; and (4) the date by which the technology or measure could be reasonably implemented.

Based on this and other relevant information, the State will identify the reasonable measures (potential RACT and RACM) to be included in air quality modeling. (At its option, the State may prefer not to make a judgment on whether certain measures are technically and economically feasible, if it believes they will not contribute to earlier attainment. In that case, the State could include those measures in the modeling, and later exclude them from RACT and RACM by showing that all the excluded measures together would not advance the attainment date by at least 1 year.) As previously mentioned, in determining the attainment date that is as expeditious as practicable, the State should consider impacts on the nonattainment area of intrastate transport of pollution from sources within its jurisdiction, and potential reasonable measures to reduce emissions from those sources.

Modeling to determine the attainment date that is as expeditious as practicable. Second, for purposes of determining the attainment date that is as expeditious as practicable, the State will need to conduct modeling to show the combined air quality impact of all of the potential measures identified in the first step with a modeling analysis for the year 2009. A base case scenario for the year 2009 would project future air quality given implementation of existing measures (Federal, State and local). If this base case scenario demonstrates attainment by 2010, then the State must demonstrate why attainment could not be achieved in an earlier year. (As noted above, given the April 2008 due date for SIP submissions, it may be difficult to achieve earlier attainment in many cases).

If the base case scenario does not demonstrate attainment, then a control case scenario (described below) is needed to examine whether the reasonable, technically and economically feasible measures identified by the State would result in attainment in 2009. The control case scenario would add potential SIP measures—e.g. potential RACT/RACM, plus any candidate intrastate transport measures that the State has identified

[27] The EPA believes that it is not necessary to identify every possible variation of every type of control measure, or all possible combinations of technologies and measures that would apply to a given source or activity if the State has properly characterized the potentially available emissions reductions and their costs. For example, EPA believes that the State can conduct a thorough analysis of VMT reduction measures without including every possible level or stringency of implementation of certain possible measures or combinations of measures for reducing VMT, so long as those measures would not affect the overall assessment of VMT reduction capabilities and the associated costs.

and would be feasible to implement by that year. States in multi-State nonattainment areas are strongly encouraged to collaborate on their modeling analyses. This modeling, along with other information known as weight of evidence considerations, would inform a judgment as to whether reasonable measures could lead to attainment of the standards within 5 years after designation. If the analysis does not demonstrate attainment by April 2010 (2009 analysis year), then the analysis would serve as the technical basis for the State to seek an extension of the attainment date for that area. Further analysis would then be necessary and is required to identify the specific attainment date.

The choice of future years to model beyond 2010 may vary from area to area. Often, modeling potential controls in two different future years may be necessary to support a judgment that a projected attainment year is as expeditious as practicable. If the area is projected to remain over the standard in the early projection year (e.g., 2009) despite the emission reductions from the modeled control measures, but is projected to be well below the standard in the later projection year (e.g., 2012), interpolation and emission inventory analysis could identify an intermediate year as the appropriate attainment date. There may be cases in which modeling a single year is sufficient because modeling of all technically and economically feasible controls results in attainment by a narrow margin in that year.

For many areas, EPA modeling analysis for CAIR and other modeling analyses that have been performed suggest a number of nonattainment areas will have a modest amount (in some cases only a few tenths of a microgram) of needed reductions in ambient levels after 2010 to reach attainment. For any such area, and for areas otherwise expected to attain relatively soon after 2010 (for example, due to substantial reductions in a dominant local source), EPA believes that this analysis should be for a year no later than 2012. A later date (e.g., 2014) may be appropriate for areas with very high $PM_{2.5}$ levels that face difficulty attaining within 10 years.

The EPA believes that it is not reasonable to require States to model each and every year between 2009 and 2014 to determine the appropriate attainment date. Modeling future year inventories is a time consuming and resource intensive process. Multiple models and pre-processors are needed in order to generate year specific emissions for the various emissions sectors (e.g. mobile, non-road, non-EGU point, EGU point, etc.). Because it is not reasonable to model every year, a logical choice often may be to model a year in the middle of the period. As such, we recommend modeling an emissions year no later than 2012 as the initial extension date (which translates to a 2013 attainment date). If this modeling indicates that the area can reach attainment by 2012, then the State can further analyze emissions and strategies to determine if the attainment date can be advanced to an earlier year. If the modeling indicates that the area cannot reach attainment by 2012, then the modeling will serve as further justification for granting a longer attainment date extension (e.g., attainment date of 2015 with modeling for 2014). In that case, additional modeling of 2014 with further emissions controls would be required in order to show attainment. Again, the State should then further analyze emissions and strategies to determine if the attainment date can be advanced to an earlier year between 2012 and 2015.

Additionally, in the discussion of air quality modeling issues in section II.E above, we discuss the benefits of addressing control strategies for multiple pollutants. Part of the challenge of multi-pollutant modeling is coordinating the future modeling years for different pollutants in order to minimize the number of required future year model runs. As part of the requirements of the 8-hour ozone implementation rule, States are currently working on modeling analyses for 2009 and in some cases for 2012 (serious nonattainment areas). For an area that cannot attain the $PM_{2.5}$ NAAQS by 2010, this may be reason to select 2012 as the year to model, so that the State could conduct the modeling for both ozone and $PM_{2.5}$ in tandem. This would, in some cases, allow the pooling of resources (e.g., inventories, model runs, etc.) and provide for faster development of a $PM_{2.5}$ attainment demonstration.

It may also be possible for the State to look at 2009 and 2014 only. In this instance, the State may find sufficient data to interpolate results for the years in between based on estimated changes in emissions.

We emphasize that when a State models later years, that this analysis must take into account potential controls that the State may have determined would not be RACT or RACM for an earlier year. For example, some measures that are impractical to implement by 2009 could be reasonable if implemented by 2010, 2011 or 2012. Thus, when the State models later years, the list of potential controls should be expanded to include technically and economically feasible measures that can be implemented by the analysis year.

Selection of RACT & RACM. Based on this analysis, the State should make decisions on RACT, RACM, intrastate measures, and the attainment date that is as expeditious as practicable. Because EPA is defining RACT and RACM as only those reasonable, technically and economically feasible measures that are necessary for attainment as expeditiously as practicable, the State need not adopt all feasible, reasonable measures. The State may exclude those reasonable measures that, considered collectively, would not advance the attainment date.

Comments and Responses

Comment: A number of commenters generally supported EPA's second proposed alternative to RACT (option 2). Most of these commenters expressed concern that the other options would require the imposition of controls whether or not they were needed to attain the $PM_{2.5}$ standards as expeditiously as practicable. Some State and local commenters also urged EPA to select option 2 as the best interpretation of the RACT requirement for $PM_{2.5}$ because they believe that it will be the most appropriate approach for designing attainment strategies for their particular nonattainment area or areas.

Response: The EPA agrees that these two points are important considerations. After carefully considering the options, we concluded that Option 2 was the most suitable approach for the $PM_{2.5}$ NAAQS. Options 1 and 3 do not reduce the States' burden to analyze potential control measures as the States would still be required to look beyond the mandated RACT for reasonably available control measures (RACM). Moreover, Options 1 and 3 could require imposition of controls on some sources that would not strictly be necessary to attain the NAAQS as expeditiously as practicable. Given the nature of the $PM_{2.5}$ nonattainment problem, EPA concluded that an interpretation that provides the maximum flexibility is a better approach.

Comment: Some commenters recommended that EPA modify proposed option 2 to include a tons-per-year threshold. Under such an approach, the States and EPA would only require RACT for sources whose emissions were above the threshold. Most of these comments recommended a RACT threshold of 100 tons per year. These commenters expressed concern that if option 2 were implemented

without such a threshold, States would be burdened with conducting RACT analyses for very small sources or source categories with low emissions.

Response: The EPA believes that under the approach chosen for the final rule in which RACT is considered to be a part of the overall RACM process, it would be difficult to define a threshold that would apply for all types of sources and for all types of control measures in all nonattainment areas. It has not been common practice under past EPA policy to establish or use an emissions threshold when considering sources for possible emission reductions as part of a RACM analysis to show attainment as expeditiously as practicable. Indeed, many of the control technique guidelines for VOC RACT do not recommend an emissions threshold. A state needing significant emission reductions to attain the standards in a given area even by 2015 would likely conclude that controls should be considered on smaller sources. In contrast, a State with an area that exceeds the standard by only a few tenths of a microgram per cubic meter may not need to consider controls on smaller source to reach attainment as expeditiously as practicable. The EPA has selected option 2 for interpretation of the RACT requirement for $PM_{2.5}$, in part, specifically because that approach contemplates that States will conduct an appropriate analysis of the spectrum of source categories and potential controls available. To cut off such analysis at a set emissions-based cut point for all sources and all areas would undermine one of the key benefits of the approach. Accordingly, EPA disagrees with comments that option 2 should include a nationally-defined threshold for the size of sources or source categories that require RACT analyses.

Comment: A number of commenters supported EPA's first and third proposed alternative approaches to RACT (option 1 and option 3). Commenters supporting these two options used similar reasoning. Commenters cited the statutory language in section 172(c)(1) requiring that the attainment plan provide for ''at a minimum'' the adoption of RACT. Accordingly, these commenters argued that RACT is an independent, minimum requirement of attainment plans irrespective of the attainment demonstration and that option 2, which would not require the adoption of RACT for all sources, has no policy or legal justification. Other commenters noted that option 1 would be much easier to implement, because RACT would be defined according to technical reasonableness and would not hinge on complicated determinations involving attainment demonstrations. Some commenters argued that option 1 provides for greater equity, because similar measures would be required for similar sources for all nonattainment areas. Finally, some commenters believed that it is inherently inconsistent to assert that plans have met the requirement for attainment ''as expeditiously as practicable'' without applying RACT to all major sources.

Response: The EPA disagrees with these comments. The EPA believes that option 2 is fully consistent with section 172(c)(1). Section 172(c)(1) requires that attainment plans must provide for the implementation of RACM as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of RACT). Contrary to the commenters' assertions, this language does not demonstrate that RACT is required for all sources, independent of RACM and attainment demonstrations. Moreover, this provision does not require RACT whether or not imposition of technology would advance the attainment date. Instead, section 172(c)(1) explicitly provides that RACT is included within the definition of RACM, and EPA has previously determined that the CAA only requires such RACM as will provide for attainment as expeditiously as practicable. (See 57 FR 13498, 13560). The courts have deferred to this interpretation and concluded that EPA interprets RACM as a collection of reasonable measures that would advance the attainment date. See *Sierra Club* v. *EPA*, 294 F.3d 155, 162 (D.C. Cir. 2002); see also *Sierra Club* v. *EPA*, 314 F.3d 735, 744 (5th Cir. 2002). The CAA does not ''compel [ ] a State to consider whether any measure is 'reasonably available' without regard to whether it would expedite attainment in the relevant area.'' *Sierra Club* v. *EPA*, 294 F.3d at 162. The EPA concludes that because section 172(c)(1) establishes that RACT is a part of RACM, EPA is reasonably applying the same interpretation to the RACT requirement for $PM_{2.5}$. The RACT is a part of the collection of measures that are necessary to reach attainment as expeditiously as practicable. It is thus directly related to what a specific area needs to attain the NAAQS, and States need not implement reasonably available measures that would not advance the attainment date as part of the $PM_{2.5}$ RACT requirement.

The EPA also finds that option 2 is consistent with the statutory language providing that a State must apply RACT to existing sources, ''at a minimum,'' to meet its requirement to apply RACM. We interpret the ''at a minimum'' clause to mean that when a State determines that control of a specified existing stationary source(s) is necessary to attain, the State must apply RACT to that source. Further, EPA believes this requirement for RACT applies to stationary sources as a group, and not to each stationary source.

The EPA finds sound policy reasons for choosing option 2. While an approach that provided for application of the same controls in all areas would provide for more equity across areas, EPA emphasizes that equity is only one of many factors considered by EPA when deciding between options 1, 2 and 3. The EPA believes that it is also important to ensure that control strategies focus on the most effective measures with the greatest possibility for significant air quality improvements. In addition, while EPA agrees that options 1 and 3 could provide for greater ease of implementation, this is also only one of the factors EPA considered when deciding between the proposed options. Under option 2, States have a greater burden and responsibility to identify the local strategy that is tailored to their particular air quality problem. At the same time, the States have the ability to identify the sources with the greatest impact on nonattainment and to identify a sound strategy that achieves attainment in the most sensible manner. The EPA believes that approaching RACT and RACM in this manner is consistent with the overall philosophy imbedded in the SIP program since its inception in the late 1960s and early 1970s.

Comment: Some commenters believed that the proposed RACM requirement was too broad. These commenters believed that the requirement to analyze the entire ''universe'' of possible measures was too burdensome for States. Commenters felt this was especially true in light of the lack of federally issued CTG and ACT documents for $PM_{2.5}$ and its precursors for all potential source categories.

Response: As explained earlier, States should apply ''reason'' in identifying measures to evaluate as potential RACM/RACT. We recognize that States are implementing the $PM_{2.5}$ standard for the first time, and do not have the long history and experience in implementing $PM_{2.5}$ as they have in implementing the PM_{10} and ozone standards. Accordingly, we expect that both the States and EPA will expend extra effort in developing and evaluating attainment plans that contain appropriate controls. A number

of resources exist to provide States with information on potential control measure costs and emissions reductions. We intend to facilitate the sharing of information through a control measure website and other efforts, and expect that States will develop screening methods to reduce the burden of analysis.

Comment: One commenter asserted that EPA should not require the analysis for, or implementation of, RACT and RACM for sources throughout the entire nonattainment area, and should permit States to focus only on sources located in smaller specific ''problem areas'' within the nonattainment area.

Response: The EPA designated areas nonattainment based upon analysis of the geographic area with sources that ''contribute'' to the violation of the NAAQS in the area, in accordance with section 107(d). These designations are based upon, among other things, a network of monitors that the State and EPA previously agreed represented the ambient air concentrations throughout the area. Additional analysis of information during the designation process indicated those areas that contributed to the violations at the violating monitor because of, among other things, the amount of emissions in such adjoining areas. Accordingly, the State in which a nonattainment area is located must evaluate the full range of sources of $PM_{2.5}$ and its precursors throughout the designated nonattainment area during the development of the SIP. The EPA agrees that there are some nonattainment areas where one or a few large emissions sources may be causing localized concentrations at a monitor that are much higher than those within the remainder of the nonattainment area. For such areas, the nonattainment strategy will likely not succeed without addressing those sources. The EPA does not, however, believe it is acceptable that the nonattainment strategy focus only on those sources, because additional reductions within the nonattainment area would still have the potential to advance the attainment date. Exempting portions of the nonattainment area could expose a portion of the public residing downwind in the area to exposure to levels of $PM_{2.5}$ that exceed the NAAQS for longer than necessary, and the health detriments from such exposure, merely to minimize the impact of having to impose control strategies on sources upwind. Moreover, to the extent that monitoring in one portion of a nonattainment area indicates violations in multiple portions of the area, a strategy that solely focused upon the sources in the immediate vicinity of the monitor might fail to assure that the NAAQS is achieved throughout the area. Because NAAQS violations generally reflect a combination of regional scale, metropolitan scale, and local scale impacts, and all three scales must be addressed, EPA requires RACT/RACM submittals to address sources throughout the nonattainment area.

Comment: Some commenters agreed with EPA's view that State's RACM analysis must address those measures that a State declines to adopt and must show whether the combined measures would cumulatively advance the attainment date by at least 1 year. One commenter questioned the legal basis for EPA's determination that the only controls necessary to attain the $PM_{2.5}$ NAAQS as expeditiously as practicable are those that would cumulatively advance an area's projected attainment date by at least one calendar year. The commenter suggested that control measures that would advance attainment by a smaller increment ''would meet the criteria endorsed in Sierra Club [Sierra Club v. EPA, 294 F.3d 155 (D.C. Cir 2002)] by 'expedit[ing] attainment in the relevant area.' ''

Response: The EPA has consistently interpreted RACM as a collection of measures that would advance the attainment date by at least 1 year, and the courts have determined that the statutory RACM requirement is ambiguous and deferred to EPA's interpretation of the requirement. See *Sierra Club* v. *EPA*, 314 F.3d 735, 744 (5th Cir. 2002); see also *Sierra Club* v. *EPA*, 294 F.3d, 155 162 (D.C. Cir. 2002). Contrary to the commenter's suggestion, the court in *Sierra Club* v. *EPA*, did not endorse specific criteria for identifying control measures that expedite attainment, but instead deferred to EPA's interpretation of an ambiguous statutory term. The courts deferred to EPA's interpretation after reviewing EPA's approval of State SIP submissions. The EPA conducts such reviews consistent with its determination that the CAA only requires such RACM as will provide for attainment as expeditiously as practicable, and its belief that it would be unreasonable to require implementation of measures that would not in fact advance attainment. See 57 FR 13498, 13560 (April 15, 1992); see also 44 FR 20372, 20374 (April 4, 1979). In considering whether a collection of measures would advance the attainment date of an area, EPA has previously interpreted the phrase ''advance the attainment date'' as meaning that the attainment date would be advanced by at least 1 year. See e.g., 66 FR 57160, 57182 (Nov. 14, 2001) (approval of Houston SIP); 66 FR 586 (Jan 3. 2001) (approval of DC area SIP). Further, EPA's use of a one-year increment in determining whether a collection of measures would advance the attainment date is reasonable and consistent with the fact that all areas will be designing attainment demonstrations for the annual $PM_{2.5}$ standard. Section 172(a)(2)(C) statute uses 1 year as the increment by which attainment date extensions can be granted. Thus, requiring evaluation of whether control measures would advance attainment by an increment of 1 year is a reasonable approach for the $PM_{2.5}$ NAAQS.

Comment: Some commenters recommended that EPA consider not requiring a RACM analysis for areas projected to attain the standards within 5 years of designation, i.e., by April 2010 for the areas currently designated nonattainment. One commenter suggested that practical considerations would make it impossible for any State projected to attain by 2010 to advance the attainment date by a year. This commenter noted that because measures to provide for attainment by 2010 must be implemented by the beginning of 2009, and SIPs are not submitted until April 2008, it would impossible to advance the implementation of measures by 1 year (that is, the beginning of 2008).

Response: The EPA generally agrees that given the time constraints it will be difficult for States with areas currently designated nonattainment to devise, adopt, and implement RACM measures to advance the attainment date before 2010. At the same time, however, we note that nothing precludes States from taking early action and we encourage States to take actions to reduce $PM_{2.5}$ concentrations where feasible even before the SIPs are submitted. RACM is required by the CAA and thus EPA cannot waive the requirement for the analysis. At the same time, EPA recognizes that a streamlined analysis may be appropriate given the short time periods involved.

3. Observations and Considerations in Determining RACT and RACM

a. Background

The preamble to the proposed rule included a discussion of general considerations for RACT (70 FR 66020 and 66021, latter part of section III.I.6) and RACM (70 FR 66028, section III.1.15). The preamble to the final rule retains this discussion with some modifications and restructuring to

reflect the combined approach to RACT and RACM

b. Final Rule

General considerations. Once the State has identified measures and technologies that are available for implementation in the nonattainment area, then it must evaluate those measures to determine whether implementation of such measures are reasonable, and would collectively advance attainment. Many of the factors that the State should take into consideration in determining whether a measure is ''reasonable'' are related to the measure's technical and economic feasibility. Since RACM applies to area and mobile sources as well as stationary sources, the State should consider other factors as well in conducting its RACM analysis. For example, in many cases obtaining emissions reductions from area and mobile sources is achieved not by adding control technology to a specific emissions source, but by reducing the level of activity of a fleet of vehicles or by modifying a type of commercial process. In these situations, the State should also consider local circumstances such as infrastructure, population, or workforce and the time needed to implement the measure in light of the attainment date.

The EPA believes that while areas projected to attain within 5 years of designation as a result of existing national measures should still be required to conduct a RACT and RACM analysis, such areas may be able to conduct a limited RACT and RACM analysis that does not involve additional air quality modeling. A limited analysis of this type could involve the review of available reasonable measures, the estimation of potential emissions reductions, and the evaluation of the time needed to implement these measures. If the State could not achieve significant emissions reductions by the beginning of 2008 due to time needed to implement reasonable measures or other factors, then it could be concluded that reasonably available local measures would not advance the attainment date. In lieu of conducting air quality modeling to assess the impact of potential RACT and RACM measures, existing modeling information could be considered in determining the magnitude of emissions reductions that could significantly affect air quality and potentially result in earlier attainment. If the State, in consultation with EPA, determines from this initial, more limited RACT and RACM analysis that the area may be able to advance its attainment date through implementation of reasonable measures, then the State would conduct a more detailed RACT and RACM analysis.

Observations on control opportunities. The implementation of the $PM_{2.5}$ NAAQS is in its initial stages, and many of the designated $PM_{2.5}$ nonattainment areas are not current or former PM_{10} nonattainment areas. Thus, some existing stationary sources in these areas may currently be uncontrolled or undercontrolled for $PM_{2.5}$ or $PM_{2.5}$ precursors. Further, to this point in time, emissions controls for existing sources in these areas may have focused primarily on particulate matter that is filterable at stack temperatures and thus may not adequately control condensable emissions. In addition, States should bear in mind that the controlled sources may have installed emission controls 15 years ago or more, and there may now be cost-effective opportunities available to reduce emissions further through more comprehensive and improved emissions control technologies, or through production process changes that are inherently lower in emissions.

Moreover, improved monitoring methods may enhance the ability of sources to maintain the effectiveness of installed emissions controls and to reduce emissions by detecting equipment failures more quickly. For example, State imposition of requirements for more frequent monitoring (e.g., continuous opacity monitors, PM continuous emissions monitors, etc.) may provide greater assurance of source compliance and quicker correction of inadvertent upset emissions conditions than existing approaches.

Even in former or current PM_{10} nonattainment areas, existing requirements for controlling direct PM emissions (e.g., with a baghouse or electrostatic precipitator) may not have been revised significantly since the 1970's. When EPA established the PM_{10} standards in 1987, we stated in the preamble that it was reasonable to assume that control technology that represented RACT and RACM for total suspended particulates (TSP) should satisfy the requirement for RACT and RACM for PM_{10}. 52 FR 24672 (July 1, 1987). The basis for EPA's belief was that controls for PM_{10} and TSP would both focus on reducing coarse particulate matter, and specifically that fraction of particulate matter that is solid (rather than gaseous or condensable) at typical stack temperatures. However, emission controls to capture coarse particles in some cases may be less effective in controlling $PM_{2.5}$. For this reason, there may be significant opportunities for sources to upgrade existing control technologies [28] and compliance monitoring methods to address direct PM emissions contributing to fine particulate matter levels with technologies that have advanced significantly over the past 15 years.

Precursor Controls. It will be important for States to conduct RACT and RACM determinations for stationary sources of $PM_{2.5}$ precursors as well as direct $PM_{2.5}$ emissions although, as noted above, the known atmospheric chemistry of the area may dictate the necessary rigor of this analysis. A significant fraction of $PM_{2.5}$ mass in most areas violating the standards is attributed to secondarily-formed components such as sulfate, nitrate, and some organic PM, and EPA believes that certain stationary sources of precursors of these components in nonattainment areas currently may be poorly controlled. Accordingly, to address these precursors, States should review existing sources for emission controls or process changes that could be reasonably implemented to reduce emissions from activities such as fuel combustion, industrial processes, and solvent usage.

Multi-State Nonattainment Areas. States in multi-State nonattainment areas will need to consult with each other on appropriate level of RACT and RACM for that area. We anticipate that States may decide upon RACT and RACM controls that differ from State to State, based upon the State's determination of the most effective strategies given the relevant mixture of sources and potential controls in the relevant nonattainment areas. So long as each State can adequately demonstrate that its chosen RACT and RACM approach will provide for meeting RFP requirements and for attainment of the NAAQS as expeditiously as practicable for the nonattainment area at issue, we anticipate approving plans that may elect to control a somewhat different mix of sources or to implement somewhat different controls as RACT and RACM. Nevertheless, States should consider RACT and RACM measures developed for other areas or other States. EPA may consider such measures in assessing the approvability of a State's SIP.

c. Comments and Responses

Comment: In the proposed rule, EPA indicated that States could consider the ''social acceptability'' of measures as a

[28] For example, see past EPA guidance on $PM_{2.5}$ control technologies: Stationary Source Control Techniques Document for Fine Particulate Matter (EPA–452/R–97–001), EPA Office of Air Quality Planning and Standards, October 1998.

factor in the determination of what constitutes RACM in a given area. A number of commenters recommended that EPA eliminate use of this factor. Some commenters questioned whether States or EPA had the legal authority to exclude measures from consideration based on social acceptability or popularity, if the measures are technically and economically available, and are needed to attain the NAAQS for protection of public health. Others expressed concerns that inclusion of such a factor would inevitably result in the elimination of controls for area and mobile sources and for this reason would unfairly focus emissions reduction strategies on industrial sources of $PM_{2.5}$ and precursors.

Response: The EPA believes that in developing RACM measures, it is important that States not rely unduly on measures that would be very difficult to enforce in practice. We discourage States from relying on measures that on paper may seem reasonably available but in practice might fail to achieve benefits due to the problems and costs of effectively enforcing these measures. However, we recognize that the CAA does not identify ''social acceptability'' as a factor in the definition of what may constitute RACT or RACM, and more generally the CAA does not establish a preference for measures that affect industrial sources instead of the general public and are therefore more likely to be ''socially acceptable.'' Therefore, given the concerns raised by commenters that establishment of ''social acceptability'' as a factor in the RACM analysis is without basis in the CAA and might result in inappropriate skewing of control strategies, we have removed this term from the final rule. We reiterate, however, that capability of effective implementation and enforcement are relevant considerations in the RACM analysis, even though public ''unpopularity'' is not. Moreover, in assessing the efficacy of measures and the credit they should be given in the context of attainment demonstrations or RFP calculations, EPA believes that such considerations are important.

4. What Factors Should States Consider in Determining Whether an Available Control Technology or Measure Is Technically Feasible?

a. Background

The following provides guidance for States to consider in determining whether an available control technology is technologically feasible.

b. Final Rule

The technological feasibility of applying an emission reduction method to a particular source should consider factors such as the source's process and operating procedures, raw materials, physical plant layout, and any other environmental impacts such as water pollution, waste disposal, and energy requirements. For example, the process, operating procedures, and raw materials used by a source can affect the feasibility of implementing process changes that reduce emissions and the selection of add-on emission control equipment. The operation and longevity of control equipment can be significantly influenced by the raw materials used and the process to which it is applied. The feasibility of modifying processes or applying control equipment also can be influenced by the physical layout of the particular plant. The space available in which to implement such changes may limit the choices and will also affect the costs of control.

Reducing air emissions may not justify adversely affecting other resources by increasing pollution in bodies of water, creating additional solid waste disposal problems or creating excessive energy demands. An otherwise available control technology may not be reasonable if these other environmental impacts cannot reasonably be mitigated. For analytic purposes, a State may consider a $PM_{2.5}$ control measure technologically infeasible if, considering the availability (and cost) of mitigating adverse impacts of that control on other pollution media, the control would not, in the State's reasoned judgment, provide a net benefit to public health and the environment. However, in many past situations, States and owners of existing sources have adopted $PM_{2.5}$ control technologies with known energy penalties and some adverse effects on other media, based on the reasoned judgment that installation of such technology would result in a net benefit to public health and the environment. States should consider this in determining technical feasibility. The costs of preventing adverse water, solid waste and energy impacts should be included in assessing the economic feasibility of the $PM_{2.5}$ control technology.

One particular cross-media issue relates to concentrated animal feeding operations (CAFOs). Should a State determine that reductions of direct $PM_{2.5}$ or $PM_{2.5}$ precursors from CAFOs are necessary for attainment in a nonattainment area, EPA strongly suggests that the State address these reductions from a cross-media perspective. Since 2003, EPA and many stakeholders have been interested in developing a framework to enable CAFOs to pursue superior environmental performance across all media. We are aware that today some CAFOs voluntarily conduct whole-farm audits to evaluate releases of pollutants to all media through Environmental Management Systems, self-assessment tools, performance track, ISO 14001 certification, and State-approved trade offs in meeting regulatory thresholds between air and water that accomplish the best overall level of environmental protection given State and local conditions. The EPA continues to believe the development of new and emerging technologies offers the potential to achieve equivalent or greater pollutant reductions than achieved solely by effluent guidelines and standards. Many of these are superior from a multimedia perspective, and EPA would like to encourage superior multimedia solutions. SIPs which need to address ammonia may provide a unique opportunity to encourage multimedia approaches at CAFOs. For example, the addition of animal by-products provides a valuable source of nutrients for crops, improves soil structure which enhances soil permeability, and adds valuable organic matter that improves soil health. However, inappropriate application can lead to air and water quality concerns or the improvement of one media at the cost of another. Optimal application technologies and rates reduce potential air and water quality standards violations. The EPA does not want to discourage approaches that are superior from a cross media perspective.

The EPA recommends that States evaluate alternative approaches to reducing emissions of particulate matter by reviewing existing EPA guidance [29] and other sources of control technology information. The EPA's 1998 guidance presents information on topics such as the design, operation and maintenance of general particulate matter control systems such as electrostatic precipitators, fabric filters, and wet scrubbers. The filterable particulate matter collection efficiency of each system is discussed as a function of particle size. The guidance document also provides information concerning

[29] Stationary Source Control Techniques Document for Fine Particulate Matter (EPA–452/R–97–001), EPA Office of Air Quality Planning and Standards, October 1998. See also: Controlling SO_2 Emissions: A Review of Technologies (EPA/600/R–00/093), EPA Office of Research and Development, November 2000.

other relevant considerations such as energy and environmental considerations, procedures for estimating costs of particulate matter control equipment, and evaluation of secondary environmental impacts. Because control technologies and monitoring approaches are constantly being improved, the State should also consider more updated or advanced technologies not referenced in this 1998 guidance when conducting a RACT determination. Emissions reductions may also be achieved through the application of monitoring and maintenance programs that use critical process and control parameters to verify that emission controls are operated and maintained so that they more continuously achieve the level of control that they were designed to achieve.[30]

c. Comments and Responses

Comment: One commenter noted that the guidance for ''technical feasibility'' implies that States look at individual sources with a BACT-like case-by-case analysis. The commenter recommended that source owners conduct such a site-specific analysis and submit the analysis to the State through the permitting process.

Response: While the analytical analysis to identify RACT is similar to BACT, as noted above, EPA in the past has issued CTGs that describe the presumptive norm for RACT controls for a given industry, but that allow for case-by-case considerations for a given source. Where States wished to require source owners to conduct such a site-specific analysis as part of the control technology review, EPA supports this type of process. On the other hand, EPA does not believe it would be appropriate to require all RACT-eligible sources to conduct such an analysis, given that States have the primary responsibility for identifying and analyzing measures for such sources.

5. What Factors Should States Consider in Determining Whether an Available Control Technology or Measure Is Economically Feasible?

a. Background

The follow provides guidance for States to consider in determining whether an available control technology is economically feasible for purposes of identifying reasonably available control measures. This guidance is slightly modified from our proposal.

[30] See EPA's Web site for more information: *http://www.epa.gov/ttn/emc/monitor.html.*

b. Final Rule

Economic feasibility encompasses considerations such as whether the cost of a potential measure is reasonable considering attainment needs of the area and the costs of other measures, and whether the cost of a measure is reasonable for the regulated entity to bear, in light of benefits.

While many States generally establish RACT requirements for a category of sources, the Act does not require the same level of control on all sources in a category, nor does the Act require that each source be controlled individually. Similar sources may have different marginal costs, profit margins and abilities to pass costs through to the consumer. These factors are appropriate to consider in determining whether a given level of control is appropriate for an individual source or category of sources. Accordingly, there is no presumption that a given source must bear a cost similar to any other source.

States should consider the capital costs, annualized costs, cost effectiveness of an emissions reduction technology, and effects on the local economy in determining whether a potential control measure is reasonable for an area or State. One available reference for calculating costs is the EPA Air Pollution Control Cost Manual,[31] which describes the procedures EPA uses for determining these costs for stationary sources. The above costs should be determined for all technologically feasible emission reduction options if such measure is inherently ''reasonably available'' (e.g., not absurd or clearly impractical). States may give substantial weight to cost effectiveness in evaluating the economic feasibility of an emission reduction technology. The cost effectiveness of a technology is its annualized cost ($/year) divided by the emissions reduced (i.e., tons/year) which yields a cost per amount of emission reduction ($/ton). Cost effectiveness provides a value for each emission reduction option that is comparable with other options and other facilities. Where multiple control options exist for a given source or source category, States should consider both the cost effectiveness (dollars per ton) of each option, and the incremental cost effectiveness per ton between the options (incremental increase in cost between options divided by the incremental tons reduced).

In determining whether a given measure is reasonable, States may consider costs per ton of other measures previously employed to reduce that pollutant, but similar costs are not conclusive. As discussed above, States may evaluate equity considerations in weighing the economic feasibility of imposing a measure on a given source or source category.

We anticipate that States may decide upon RACT and RACM controls that differ from State to State, based on the State's determination of the most effective strategies given the relevant mixture of sources and potential controls in the relevant nonattainment areas, and differences in the difficulty of reaching attainment.

In considering what level of control is reasonable, EPA is not proposing a fixed dollar per ton cost threshold for RACT, consistent with the views of multiple commenters. Areas with more serious air quality problems typically will need to obtain greater levels of emissions reductions from local sources than areas with less serious problems. Where essential reductions are more difficult to achieve (e.g., because many sources are already controlled), the cost per ton of control may necessarily be higher.

It is not appropriate to assume that the same cost per ton range is reasonable for direct $PM_{2.5}$ and different precursors, because an equal amount of emission reduction in different pollutants has a different impact on $PM_{2.5}$ ambient levels. For example, in a given nonattainment area, reductions of direct $PM_{2.5}$ emissions may prove more expensive than reductions of NO_X emissions, but the resulting benefits of reductions of direct $PM_{2.5}$ might warrant the higher costs. A State should consider this differential impact on ambient $PM_{2.5}$ in considering RACT for controlling different pollutants. During the SIP process, States and regional planning organizations typically conduct sensitivity modeling that can provide this information. Also, the PM NAAQS RIA provides information on the differential impact of $PM_{2.5}$ and PM precursor reductions on ambient $PM_{2.5}$ levels in various areas.[32]

One of the factors that could affect estimated compliance costs of an emission reduction measure is the timing of its implementation. Hypothetically, if a short compliance period were contemplated for a set of sources, and if the short compliance

[31] *EPA Air Pollution Control Cost Manual—Sixth Edition* (EPA 452/B–02–001), EPA Office of Air Quality Planning and Standards, Research Triangle Park, NC, Jan 2002.

[32] See: U.S. EPA 2006. *Regulatory Impact Analysis for the Particulate Matter National Ambient Air Quality Standards.* Air Benefits and Cost Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC, October 6, 2006. Appendix A provides an analysis of estimated benefits and costs of attaining the 1997 PM NAAQS standards in 2015.

period resulted in high demand for a limited supply of labor or other resources, compliance costs could be higher than if the same measure were implemented by a later compliance date. In such a case it may be reasonable for the State to find that the measure is reasonable only if implemented by the later date.

If a source contends that a source-specific RACT level should be established because it cannot afford the technology that appears to be RACT for other sources in its source category, the source can support its claim with such information as:

—Fixed and variable production costs ($/unit)
—Product supply and demand elasticity,
—Product prices (cost absorption vs. cost pass-through),
—Expected costs incurred by competitors,
—Company profits once the technology or measure is in operation (considering the annualized costs and the marginal costs of alternative technologies and measures),
—Employment costs, and
—Any other unique factor(s) particular to the individual source.

Finally, the EPA clarifies that if the State demonstrates through economic analysis that the imposition of the measure would cause unacceptable economic disruption for the local economy, that is, a plant shutdown or a severe curtailment in plant employment or output, a State may reject the measure as not reasonable to reach attainment as expeditiously as practicable.

c. Comments and Responses

Comment: Some commenters agreed with EPA's proposal not to establish presumptive cost-effectiveness thresholds.

Response: The EPA agrees with the commenters.

Comment: A number of commenters expressed concerns over the references to health benefits as a consideration in whether measures are technically or economically available. Some commenters believed this is a consideration not authorized by the CAA. Others believed that consideration of benefits, in combination with EPA's estimates of benefits per ton, would have the effect of converting RACT to more stringent LAER levels. Some commenters expressed concerns whether States had the resources or expertise to conduct cost-benefit analyses for this purpose.

Response: The EPA wishes to clarify that the reference to health benefits does not mean that a cost-benefit, or a detailed health benefits assessment, is a necessary part of a control strategy demonstration. We also wish to clarify that EPA is not requiring that the costs of all technologies and measures for $PM_{2.5}$ and precursors be deemed acceptable at any dollar/ton levels at or below the calculated monetized benefits per ton of reduction. We do, however, continue to believe that the significant benefits associated with $PM_{2.5}$ ambient reductions is a relevant consideration in control strategy development. The EPA disagrees that this limited consideration of benefits would convert the RACT process to the equivalent of LAER.

Comment: One commenter objected to EPA's proposed requirement that States consider competitive factors such as production costs, demand elasticity, product prices, and cost incurred by competitors in the determination of RACT. The commenter believed that this information is generally not accessible to States or industrial facility owners, and is not necessary for a RACT determination.

Response: The EPA generally disagrees that this type of information is unavailable. For example, EPA calculates or reviews this type of data on a regular basis as part of our work on MACT, NSPS, and other emissions standards. A document that describes these types of analyses and the data used to prepare them is the OAQPS Economic Resource Manual found at *http://www.epa.gov/ttn/ecas/analguid.html.* EPA believes that this issue is most relevant to category-wide RACT rules where a source seeks a case-by-case exemption. Further, EPA believes most RACT determinations will be developed through case-by-case analyses rather than rules affecting entire source categories. Accordingly, this analysis likely will be relevant in few cases.

6. What Specific Source Categories and Control Measures Should a State Evaluate When Determining RACT and RACM for a Nonattainment Area?

a. Background

Section 172 does not provide a specific list of source categories and control measures that must be evaluated for RACT and RACM for $PM_{2.5}$. However, section 172(c)(3) indicates that the attainment plan must include a ''comprehensive, accurate, current, inventory of actual emissions from all sources of the relevant pollutant.'' This indicates that States should look broadly at the different types of sources in the nonattainment area. We recognize that $PM_{2.5}$ is a new NAAQS without a long history of implementation as with ozone. Therefore, we included a list of potential RACM measures in the preamble to the proposed rule, based upon a review of information about the contribution of various sources to emissions inventories and a review of potential control measures for such sources. We requested comment on the specific sources and potential control measures recommended for RACM analysis on this list. Based on comments received and additional information available to EPA since the proposal, we have made some changes to the list. We also refer to this list of potential ''RACT and RACM'' measures for the combined approach to RACT and RACM in the final rule.

In the preamble to the proposed rule, EPA indicated that due to the short time available, it does not plan to develop new control techniques guidance (CTG) or ACT documents specifically for purposes of $PM_{2.5}$ implementation. The EPA indicated that other information was available on control technologies, and EPA also indicated its intention to maintain an updated list of references for new $PM_{2.5}$ control technology information.

b. Final Rule

Emission reduction measures constituting RACM should be determined on an area-by-area basis. We believe that a State should consider each of the measures listed in this section to determine if each measure is reasonably available in the applicable nonattainment area. However, we do not presume that each of these measures is reasonably available in each nonattainment area.

We recommend that each State use the list of source categories in this section as a starting point for identifying potentially available control strategies (regulatory and voluntary) for a nonattainment area. States are encouraged and expected to add other potentially available measures to the list based on its knowledge of the particular universe of emissions sources in the area and comments from the general public. We expect that, depending on the potential measure being analyzed, the State's degree of evaluation will vary as appropriate. Detailed information on emission control technologies is available from a number of sources.[33] The EPA intends to maintain a website with links to sources of information for

[33] There are a number of sources of information on technologies for reducing emissions of $PM_{2.5}$ and its precursors. Links are provided to a number of national, state and local air quality agency sites from EPA's $PM_{2.5}$ Web site: *http://www.epa.gov/pm/measures.html.*

controlling emissions of direct particulate matter and PM precursors.

As discussed in section II.J.5. above, EPA recognizes that control technology guidance for certain source categories has not been updated for many years. Section 183(c) of the CAA, which addresses control technologies to address ozone nonattainment problems, requires EPA to ''revise and update such documents as the Administrator determines necessary.'' As new or updated information becomes available States should consider the new information in their RACT determinations. A State should consider the new information in any RACT determinations or certifications that have not been issued by the State as of the time such updated information becomes available.

Stationary Source Measures

—Stationary diesel engine retrofit, rebuild or replacement, with catalyzed particle filter

—New or upgraded emission control requirements for direct $PM_{2.5}$ emissions at stationary sources (e.g., installation or improved performance of control devices such as a baghouse or electrostatic precipitator; revised opacity standard; improved compliance monitoring methods)

—Improved capture of particulate emissions to increase the amount of $PM_{2.5}$ ducted to control devices, and to minimize the amount of $PM_{2.5}$ emitted to the atmosphere, for example, through roof monitors

—New or upgraded emission controls for $PM_{2.5}$ precursors at stationary sources (e.g., SO_2 controls such as wet or dry scrubbers, or reduced sulfur content in fuel; desulfurization of coke oven gas at coke ovens; improved sulfur recovery at refineries; increasing the recovery efficiency at sulfuric acid plants)

—Energy efficiency measures to reduce fuel consumption and associated pollutant emissions (either from local sources or distant power providers)

—Measures to reduce fugitive dust from industrial sites

Mobile Source Measures

—Onroad diesel engine retrofits for school buses,[34] trucks and transit buses using EPA-verified technologies

—Nonroad diesel engine retrofit, rebuild or replacement, with catalyzed particle filter [35]

—Diesel idling programs for trucks, locomotive, and other mobile sources [36]

—Transportation control measures (including those listed in section 108(f) of the CAA as well as other TCMs), as well as other transportation demand management and transportation systems management strategies [37]

—Programs to reduce emissions or accelerate retirement of high emitting vehicles, boats, and lawn and garden equipment

—Emissions testing and repair/maintenance programs for onroad vehicles

—Emissions testing and repair/maintenance programs for nonroad heavy-duty vehicles and equipment [38]

—Programs to expand use of clean burning fuels [39]

—Low emissions specifications for equipment or fuel used for large construction contracts, industrial facilities, ship yards, airports, and public or private vehicle fleets

—Opacity or other emissions standards for ''gross-emitting'' diesel equipment or vessels

Area Source Measures

—New open burning regulations and/or measures to improve program effectiveness such as programs to reduce or eliminate burning of land clearing vegetation

—Programs to reduce emissions from woodstoves and fireplaces including outreach programs, curtailments during days with expected high ambient levels of $PM_{2.5}$, and programs to encourage replacement of woodstoves when houses are sold

—Controls on emissions from charbroiling or other commercial cooking operations

—Reduced solvent usage or solvent substitution (particularly for organic compounds with 7 carbon atoms or more, such as toluene, xylene, and trimethyl benzene)

Category-Specific Guidelines on innovative approaches. The EPA has issued a number of category specific guidelines on approaches to taking into account innovative approaches to emissions reductions for purposes of SIPs. Categories currently covered by these guidelines include: (1) Electric-sector Energy Efficiency and Renewable Energy Measures; (2) Long Duration Switch Yard Locomotive Idling; (3) Long Duration Truck Idling; (4) Clean Diesel Combustion Technology; and (5) Commuter Choice Programs. See *http://www.epa.gov/ttn/airinnovations/measure_specific.html.*

c. Comments and Responses

Comment: Some commenters recommended that EPA provide new CTGs or other control technology review documents for purposes of assisting States to address $PM_{2.5}$ and its precursors, because the information in some current documents is out-dated.

Response: The EPA recognizes that issuance of new or updated CTGs specifically tailored for $PM_{2.5}$ would be useful. Unfortunately, limitations on time and resources preclude EPA from developing such CTGs in advance of the SIP submission date. The EPA cannot delay the statutorily specified outer date for SIP submission. However, EPA believes that there are already many sources of information and guidance on key source categories. To the extent that States need to examine potential control measures for sources never addressed before in any area or other context for a previous NAAQS, EPA anticipates that it will work closely with States during the process of plan development and approval to ensure an appropriate approach.

Comment: A number of commenters expressed concerns with references to the STAPPA and ALAPCO *Menu of Options* document. Some commenters believed that this document must be subject to formal review and comment to ensure appropriate stakeholder input.

Response: The language in the final preamble has been changed to refer to a Web site EPA maintains that provides access to a variety of information sources regarding control technologies that may be useful to States to consider in developing their $PM_{2.5}$ SIPs. These links include evaluations developed by government and nongovernment organizations. One such source with potentially useful information is the STAPPA and ALAPCO *Menu of Options.* However, EPA is not specifically endorsing any of the specific evaluations as being appropriate in any specific situation. Rather, we think documents such as the

[34] See Clean School Bus USA program at *http://www.epa.gov/cleanschoolbus/.* See also: ''What You Should Know About Diesel Exhaust and School Bus Idling,'' (June 2003, EPA420–F–03–021) at *http://www.epa.gov/otaq/retrofit/documents/f03021.pdf.*

[35] See EPA's voluntary diesel retrofit program Web site at *http://www.epa.gov/otaq/retrofit/overfleetowner.htm.*

[36] See EPA's voluntary diesel retrofit program Web site at *http://www.epa.gov/otaq/retrofit/idling.htm.*

[37] See EPA's Web site on transportation control measures at *http://www.epa.gov/otaq/transp/traqtcms.htm.*

[38] See EPA's Web site on nonroad engines, equipment, and vehicles at *http://www.epa.gov/otaq/nonroad.htm.*

[39] Fuels adopted in SIPs must be consistent with the Energy Policy Act of 2005 and EPA guidance on SIP-approved boutique fuels at 71 FR 78192 (December 28, 2006).

Menu of Options provide potentially useful ideas. Specifically, States would need to assess which items on the menu are applicable in their areas, and will have to assess the costs of applying controls locally. Accordingly, there would be ample opportunity for public review of the State's analysis of the local cost and air quality impacts of any measure listed in the document which is included in a State's SIP. The EPA is not requiring that States adhere to the list of measures in the *Menu of Options.* The EPA does not in any way mean to imply that the measures in the *Menu of Options* are presumed to be RACM, merely that they are potential controls for areas to consider. The *Menu of Options* has no regulatory significance and thus need not be issued through notice-and-comment rulemaking. The EPA notes, however, that the *Menu of Options* does provide a broad list of potential sources and measures that can help inform States in the development of their plans. Similarly, our own list of potential measures is not intended to be a categorical list of measures which States must adopt, rather it is intended to provide guidance about the types of sources and measures that States can consider in constructing their attainment plans. The EPA emphasizes that whether a source category or potential measure is or is not on this list is simply not conclusive as to whether a given measure is appropriate to consider in the RACT and RACM analysis. That can be determined only through the State's development of the attainment plan, and EPA's evaluation of such plan.

Comment: A commenter representing the paper industry interpreted the proposed rule as requiring electrostatic precipitator and tighter sulfur-in-fuel requirements for the forest products industry. The commenter believed that EPA was creating limits for such sources without adequate rulemaking process.

Response: The EPA disagrees that the listing of control technologies in the table in the rule creates a ''rebuttable presumption.'' Rather, the table identifies potential opportunities for emissions reductions which should be reviewed in light of technical and economic feasibility, and which a State should consider in a list of possible RACT and RACM measures for purposes of attaining the standards as expeditiously as practicable. The EPA is currently conducting a sector-based approach to the paper industry. One of the goals of the sector initiative on pulp and paper is to work with the industry to identify reductions in SO_2 and $PM_{2.5}$ that will assist us in meeting the NAAQS, considering facility locations, magnitude of emissions, emission stream characteristics, and cost effectiveness of controls.

Comment: A number of commenters believed that EPA should develop not only a list of measures to consider for RACM, but should develop a list of mandatory measures that States should include, particularly for areas with attainment dates more than 5 years after designation.

Response: See discussion in section II.D.3 regarding rule requirements for attainment date extensions and the issue of whether certain measures should be mandatory in order for an area to receive an extension.

Comment: Some commenters believed that the list of possible measures was deficient in not including sources of $PM_{2.5}$ and $PM_{2.5}$ precursors from agricultural sources. One commenter believed the list is incomplete without identifying the contribution of ammonia emissions associated with livestock, poultry, and crop fertilizers.

Response: As we indicated in the proposal, we included a list of potential RACM measures in the preamble to the proposed rule, based upon a review of information about the contribution of various sources to the emissions inventories and a review of potential control measures for such sources. We did not identify emissions from agricultural sources in this review. Because ammonia is not presumed to be a $PM_{2.5}$ precursor unless identified for a specific area by the State or EPA, regulation of ammonia emissions from agricultural sources may not be necessary.

We also note that the agricultural industry presents unique challenges to regulators given the nature of relevant emissions sources. Moreover, we currently lack good methods to quantify agricultural emissions, and we do not fully understand their contribution to nonattainment problems. We have entered into an agreement with several animal producer sectors to monitor animal feeding operations to develop better tools to assess emissions from this industry. Hopefully, these tools will enhance our knowledge of agricultural emissions and their contribution to nonattainment problems. Until emissions from these sources are better understood, States should be judicious in determining whether any specific measure is RACT/RACM for this industry.

The EPA recognizes that the United States Department of Agriculture (USDA) has been working with the agricultural community to develop conservation systems and activities to control coarse particle emissions. Based on current ambient monitoring information, these USDA-approved conservation systems and activities have proven to be effective in controlling these emissions in areas where coarse particles emitted from agricultural activities have been identified as a contributor to a violation of the PM_{10} NAAQS. The EPA has found that where USDA-approved conservation systems and activities have been implemented, these systems and activities have satisfied the Agency's reasonably available control measure and best available control measure requirements for areas needing to attain the PM_{10} standards.

The EPA believes that in the future, certain USDA-approved conservation systems and activities that reduce agricultural emissions of fine particles may be able to satisfy the requirements of applicable sources to implement reasonably available control measures for purposes of attaining the $PM_{2.5}$ NAAQS. The EPA will work with States to identify appropriate measures to meet their RACM requirements, including site-specific conservation systems and activities. The EPA will continue to work with USDA to prioritize the development of new conservation systems and activities; demonstrate and improve, where necessary, the control efficiencies of existing conservation systems and activities; and ensure that appropriate criteria are used for identifying the most effective application of conservation systems and activities.

Comment: Some commenters raised concerns about a statement in the proposal that ''[i]n addressing a nonattainment area having military training, testing and operational activities occurring within it, the State should not need to target these activities for emission reductions.'' Some commenters interpreted this statement as an exemption from any emission reduction requirements for military sources.

Response: The statement in the proposal was not intended as an exemption for all military activities. Emissions potentially contributing to $PM_{2.5}$ concentrations at military installations originate from a variety of sources: basic operational activities (such as power generation, other fuel combustion, and transportation to and from residences, offices, and schools); and from field training and testing activities (such as personnel training, obscurants used in training, operation of nonroad vehicles and equipment, and related prescribed burning operations). The EPA believes that in evaluating emissions for a specific nonattainment

area having military activities occurring within it, the State should consult with DOD for information on the nature of these activities and their associated emissions.

With regard to military training activities specifically, such activities are periodic in nature, and when they do occur, the principal type of emissions generated by these activities is dust (i.e. inorganic direct PM emissions) from field operations. Other pollutants may be emitted to a lesser degree from certain onroad and nonroad motor vehicles. While military training activities may contribute some degree of primary $PM_{2.5}$ emissions to certain nonattainment area inventories, the fugitive dust generated from military training activities is predominantly composed of coarse PM rather than fine PM.

Based on data from the $PM_{2.5}$ speciation monitoring network operated by EPA and the States, the contribution of inorganic dust to total $PM_{2.5}$ mass on an annual average basis is relatively low in most nonattainment areas, on the order of 0.5 to 1.5 micrograms per cubic meter (generally 10% or less of total $PM_{2.5}$ mass). Dust from military training activities would be a subset of these levels. Depending on the available information and specific circumstances for a particular area, a State could find in its SIP development analyses that direct $PM_{2.5}$ emissions from military training activities do not significantly contribute to $PM_{2.5}$ concentrations in the nonattainment area, and therefore would not need to target military training activities for emission reductions in its attainment plan.[40]

7. How Should States Consider EGU Reductions for CAIR in Meeting RACT/RACM Requirements?

a. Background

In section III.I.11 of the preamble to the proposed rule, we discussed the nature of the SO_2 and NO_X RACT obligations of electric generating unit (EGU) sources in states subject to the CAIR emission reduction requirements. The CAIR rulemaking was finalized in March 2005 and published at 70 FR 25221 (May 12, 2005). CAIR requires 28 states and the District of Columbia to significantly reduce emissions of SO_2 and/or NO_X. The 26 jurisdictions in the CAIR $PM_{2.5}$ region are required to reduce annual emissions of SO_2 and NO_X, and the 26 jurisdictions in the CAIR ozone region are required to reduce seasonal emissions of NO_X. These jurisdictions also have the option of participating in EPA-administered annual SO_2, annual NO_X, and seasonal NO_X cap-and-trade programs (the CAIR trading programs) to meet these emission reduction requirements. In addition, in March 2006, EPA promulgated a Federal implementation plan (FIP) to implement CAIR in these jurisdictions until they have EPA approved CAIR SIPs in place (71 FR 25328, April 28, 2006). The FIP adopts, as the control measure, the CAIR trading programs slightly modified to allow for Federal instead of State implementation. When fully implemented, CAIR will reduce SO_2 emissions in these jurisdictions by over 70 percent and NO_X emissions by over 60 percent from 2003 levels. This will result in $85 to $100 billion in health benefits and nearly $2 billion in visibility benefits per year by 2015 and will substantially reduce premature mortality in the eastern United States. The benefits will continue to grow over time as the program is fully implemented (i.e., the SO_2 emission bank is depleted and the final cap is met), and as growth in populations and the aging of the population continues (which increases the susceptible population).

Sources subject to cap-and-trade programs such as the CAIR trading programs generally have the option of installing emissions control technology, adopting some other strategy to reduce emissions, or purchasing emissions allowances and thereby effectively paying other sources covered by the cap to reduce emissions. In the proposal, we noted that a number of EGUs expected to be covered by the CAIR trading programs are located in nonattainment areas. Based on emissions projections for 2010 and 2015 using the Integrated Planning Model (IPM), some of these EGUs are expected to comply with CAIR by purchasing allowances under the trading program and some are expected to comply by installing emission controls.

The proposal also described our past experience with the implementation of the NO_X SIP Call and our belief that many power companies will develop their strategies for complying with CAIR based, in part, on consultations with State and local air quality officials in order to address local $PM_{2.5}$ and ozone attainment planning needs. The EPA suggested that consultations on location of CAIR controls would be timely during State development of the CAIR SIP, which is due in 2006, prior to the April 2008 deadline for submitting $PM_{2.5}$ nonattainment area SIPs.

The EPA proposed a determination that in States that fulfill their CAIR SO_2 emission reductions entirely through EGU emission reductions (i.e. without reductions from non-EGU sources or allowing non-EGU sources to opt-in to the CAIR SO_2 trading program), participation in the CAIR SO_2 trading program would satisfy the SO_2 RACT requirement for the EGU sources. The EPA also proposed that in states that fulfill their CAIR NO_X emission reductions entirely through EGU emission reductions, CAIR would satisfy NO_X RACT for the EGU sources, provided that those sources with existing selective catalytic reduction (SCR) emission control technology installed on their boilers operate that technology on a year-round basis beginning in 2009. Note that direct $PM_{2.5}$ emissions are not addressed by the CAIR program, and EPA did not propose any determination that compliance with CAIR would satisfy RACT for direct $PM_{2.5}$ emissions. The proposal included a discussion of the rationale for these proposed determinations for SO_2 and NO_X, and requested comments on the issue.

b. Final Rule

As discussed in section II.F.2 on our overall policy for RACT and RACM, we consider an area's obligation to implement RACT to be part of the area's overall RACM obligation—to adopt those reasonably available measures needed to reach $PM_{2.5}$ attainment as expeditiously as practicable. The final rule also reflects this combined RACT/RACM approach regarding EGU control obligations under CAIR and the extent to which meeting CAIR also satisfies a source's RACT and RACM requirements for attainment.

Specifically, the final rule includes a presumption that in States that fulfill their CAIR SO_2 emission reduction requirements entirely through EGU emission reductions (i.e. without reductions from non-EGU sources or allowing non-EGU sources to opt in to the CAIR SO_2 trading program), compliance by EGU sources with an EPA-approved CAIR SIP or a CAIR FIP would satisfy their SO_2 RACT/RACM requirements for attaining the fine particle NAAQS. This section also includes a presumption that in States

[40] Windblown dust from agricultural tilling activities also can be a periodic source of inorganic PM in some areas. In some cases such dust would be expected to be predominantly composed of coarse PM rather than fine PM. Depending on the available information and specific circumstances for a particular area, it is possible that a State could find in its SIP development analyses that direct $PM_{2.5}$ emissions from agricultural tilling activities do not significantly contribute to annual average $PM_{2.5}$ concentrations in the nonattainment area, and therefore would not need to require emission reductions from agricultural tilling activities in the plan for attaining the annual standard. However, States should be mindful of the contribution of these sources to 24-hour fine particle concentrations.

that are subject to CAIR annual NO_X emission reduction requirements and fulfill these requirements entirely through EGU emission reductions (i.e. without reductions from non-EGU sources or allowing non-EGU sources to opt in to the CAIR annual NO_X trading program), compliance by EGU sources with an EPA-approved CAIR SIP or a CAIR FIP would satisfy the NO_X RACT/RACM requirement for the $PM_{2.5}$ NAAQS, provided that the sources with existing selective catalytic reduction (SCR) emission control technology installed on their boilers operate that technology on a year-round basis beginning in 2009. This final position is based on a number of factors identified in the proposal and discussed below.

Many $PM_{2.5}$ nonattainment areas are projected to achieve significant SO_2 and NO_X reductions under the CAIR program. We do not believe that requiring source-specific RACT/RACM controls on specified EGUs in nonattainment areas would reduce total SO_2 and NO_X emissions from sources covered by CAIR below the regionwide levels that will be achieved under CAIR alone. Nor do we believe that ''beyond CAIR'' EGU controls for SO_2 and NO_X are ''reasonably available'' control measures for most areas within the CAIR Region. Accordingly, most States need not evaluate additional control measures on EGUs to satisfy RACT/RACM requirements as explained above.

As discussed previously, we are not requiring that States impose RACT on any specific size or type of source. Instead, States must conduct a RACT/RACM analysis considering measures that are ''reasonably available'' to meet the overarching requirement to attain the standards as expeditiously as practicable. Thus, the final rule imposes no specific requirement on States to impose RACT/RACM on EGUs.

Nonetheless, in evaluating RACT/RACM for EGUs, EPA believes it is appropriate for States (states that achieve all reductions from EGUs) to consider the special attributes of that group of facilities including the unique interrelated nature of the power supply network, and their participation in the CAIR program. For EGUs in the CAIR region, based upon the presumption explained here, States may define RACT/RACM as the CAIR level of control on the collective group of sources in the region rather than impose a specific level of control on an individual source. This approach is similar to the Agency's past ''bubble'' policy, as discussed in section (c) addressing comments on the proposal.

As discussed more fully in the CAIR final rulemaking notice, EPA has set the 2009 and 2010 CAIR caps for SO_2 and NO_X at a level that will require EGUs to install emission controls on the maximum total capacity on which it is feasible to install emission controls by those dates. The EPA concluded that the CAIR compliance dates represent an aggressive schedule that reflects the limitations of the labor pool, and equipment/vendor availability, and need for electrical generation reliability for installation of emission controls.

Although the actual SO_2 cap does not become effective until 2010, we designed banking provisions in CAIR so that covered EGUs will begin to reduce their SO_2 emissions almost immediately after CAIR is finalized, and will continue steadily to reduce their emissions in anticipation of the 2010 cap and the more stringent cap that becomes effective in 2015. The 2015 SO_2 and NO_X caps are specifically designed to eliminate all SO_2 and NO_X emissions from EGUs that are highly cost effective to control (the first caps represent an interim step toward that end).

Moreover, we predicted that the majority of large coal-fired utilities will install advanced control technologies under CAIR because the larger and higher emitting source offer an opportunity to obtain more cost-effective emissions reductions. We expect that the largest-emitting sources will be the first to install SO_2 and NO_X control technology and that such control technology will gradually be installed on progressively smaller-emitting sources until the ultimate cap is reached. As a result, few, if any coal-fired units with greater than 600 MW of operating capacity should operate in $PM_{2.5}$ nonattainment areas without advanced control after full implementation of CAIR. Of the remaining units operating without advanced pollution controls, a great many of these units will have operating capacities below 300 MW. We predict that these units ''will be utilized less often,'' and ''typically have baghouses and electrostatic precipitators for particulate control, have combustion controls for NO_X control, and burn low-sulfur coal.'' See ''Contributions of CAIR/CAMR/CAVR to NAAQS Attainment: Focus on Control Technologies and Emission Reductions in the Electric Power Sector,'' Office of Air and Radiation, U.S. Environmental Protection Agency, April 18, 2006 (available at *http://www.epa.gov/airmarkets/cair/analyses/naaqsattainment.pdf*). In light of these expected results, we generally believe that the cost to install additional controls on these smaller units would be unreasonable.

We are also concerned that if States require specific EGUs to install advanced pollution control measures, it could interfere with the market-based incentives inherent in the cap and trade program. This could increase the cost of compliance and shift the location of the units that would otherwise opt to install advanced emissions controls. Such a result may be counterproductive to that State's attainment efforts, as the State may forego a larger quantity of more beneficial reductions in transported pollutants, in exchange for a smaller quantity and less beneficial reduction in local emissions. Moreover, it may reduce the benefits expected in other nonattainment areas as well. Accordingly, even if a State found the cost to control an individual unit acceptable on a cost per ton basis, the potential overall disbenefit of control may nonetheless make imposition of the control not ''reasonably available.''

The EPA finds that the control installations projected to result from CAIR NO_X and SO_2 caps in 2009 and 2010 are as much as feasible from EGUS across the CAIR Region by those dates. In fact, if states chose to require smaller-emitting sources in nonattainment areas to meet source-specific RACT requirements by 2009, they would likely use labor and other resources that would otherwise be used for emission controls on larger sources. Because of economies of scale, more boiler-makers may be required per megawatt of power generation for smaller units than larger units. In this case, the imposition of source-specific RACT/RACM on smaller emitting sources by 2009 could actually reduce the amount of banking that would otherwise occur and result in higher SO_2 emissions in 2009 as compared to the level that would result from implementation of CAIR alone.

In any event, the imposition of source-specific control requirements on a limited number of sources also covered by a cap-and-trade program would not reduce the total regionwide emissions from sources subject to the program. Under a cap-and-trade program such as CAIR, a given number of allowances are issued in order to achieve a given emission level. Source-specific control requirements within the CAIR program may affect the temporal distribution of emissions (by reducing banking and thus delaying early reductions) or the spatial distribution of emissions (by moving them around from one place to another), but they would not affect total regional emissions under the program. If source-specific requirements were targeted at the units

that could be controlled most cost-effectively, then the imposition of source-specific controls would likely achieve the same result as the cap-and-trade program. If not, however, the imposition of source-specific requirements would make any given level of emission reduction more costly than it would be under the cap-and-trade program alone. Thus, the imposition of source-specific RACT on EGUs covered by CAIR would not reduce total regionwide emissions, but would likely achieve emission reductions under the program in a more costly way.

Given the considerations described above, we think that in many areas additional controls on EGUs generally would not be ''reasonably available.'' Notwithstanding these conclusions, we recognize that States are in the best position to determine how best to achieve attainment with the $PM_{2.5}$ NAAQS in light of local needs and conditions. As we acknowledged in our proposed rule, power plant operators typically have ongoing relationships with the State and local officials involved in air quality planning. We expect that power plants will continue to collaborate with State officials to determine how best to address multiple air quality goals, and which plant locations to control under CAIR, considering local $PM_{2.5}$ and ozone attainment needs.

The EPA expects States and local air agencies to identify reasonably available control measures that are necessary and reasonable to attain the standards as expeditiously as practicable; and that after consulting with power companies, the State may conclude that establishing additional ''beyond CAIR'' emission control requirements on specific sources in nonattainment areas is warranted to provide for attainment as expeditiously as practicable. Nevertheless, in preparing the overall attainment demonstration, States should be aware of the expected benefits of the market-based incentives of the CAIR program, the cost effectiveness of control, feasibility of implementation, and any disbenefits that would result from requiring ''beyond CAIR'' controls on any specific EGU before concluding that additional controls on EGUs are ''reasonably available'' and necessary to satisfy RACT/RACM requirements.

Year-round NO_X controls. In the CAIR final rulemaking notice, EPA found that the operation of existing SCRs on a year-round basis, instead of operating them only during the ozone season, could achieve NO_X reductions at low cost relative to other available NO_X controls. The EPA projected that power generators would employ this control measure to comply with CAIR SIPs. Based on this control opportunity, EPA estimated the average cost of non-ozone-season NO_X control at $500/ton. These considerations support a finding that RACT should include year-round operation of existing SCRs that are located in $PM_{2.5}$ nonattainment areas. Because all $PM_{2.5}$ nonattainment areas violate the annual form of the $PM_{2.5}$ standard and public health can be affected by high $PM_{2.5}$ levels in the winter as well as the summer, we believe that year-round operation of existing SCR that are located in nonattainment areas where NO_X is an attainment plan precursor will provide additional health benefits for relatively low dollar cost per ton of pollutant reduced.

In the proposal notice, EPA proposed to define ''existing'' SCRs as those units that were in place by the date of the proposed rule (November 1, 2005). We selected this date rather than the final date to avoid creating an incentive to delay installation of new SCR. Today, we finalize our proposed approach with one clarification. To avoid confusion over the proper interpretation of the phrase ''in place,'' we are clarifying that an existing SCR is one which is fully installed and capable of operation by November 1, 2005.

We also proposed that these existing SCR begin year-round operations no later than January 1, 2009 to qualify as RACT/RACM under our presumptive approach. We noted that year round operation of existing SCR involves little to no alteration of existing equipment, and that EGUs could conduct any required work during normal outages. Today, after taking these factors into account, we finalize our proposed rule. The year-round operation requirement, however, will not be federally enforceable to individual EGUs until EPA approves a State's SIP including the requirement.

c. Comments and Responses

Comment: Some commenters supported the proposed determination described in section (a) that in States that fulfill their CAIR SO_2 emission reduction requirements entirely through EGU emission reductions (i.e. without reductions from non-EGU sources or allowing non-EGU sources to opt in to the CAIR SO_2 trading program), compliance by EGU sources with an EPA-approved CAIR SIP or a CAIR FIP would satisfy the SO_2 RACT requirement for the sources; and in States that are subject to CAIR annual NO_X emission reduction requirements and fulfill these requirements entirely through EGU emission reductions (i.e. without reductions from non-EGU sources or allowing non-EGU sources to opt in to the CAIR annual NO_X trading program), compliance by EGU sources with an EPA-approved CAIR SIP or a CAIR FIP would satisfy the NO_X RACT requirement for the sources, provided that the sources with existing selective catalytic reduction (SCR) emission control technology installed on their boilers operate that technology on a year-round basis beginning in 2009. One commenter supported EPA's approach so long as States may pursue additional reductions from EGUs if needed for attainment as expeditiously as practicable. A number of other commenters opposed the proposed determination regarding RACT for EGUs based on a number of issues.

Response: Based on the rationale described in the sections above, the final rule includes a presumption that compliance with CAIR satisfies SO_2 and NO_X RACT/RACM requirements for EGUs in many areas. Nonetheless, States can require ''beyond CAIR'' EGU controls if a State determines that it is a necessary and reasonable means to attain the $PM_{2.5}$ standards. Comments opposing this approach are addressed in more detail below.

Comment: A number of commenters objected to the proposed determination, arguing that it would result in greater control requirements and economic burden on non-EGU sources located in nonattainment areas. These commenters urged EPA to adopt a final rule that provides for implementing the most cost-effective controls necessary to attain the standard. They assert that with the proposed finding that compliance with CAIR satisfies RACT for EGUs, the proposed rule would not provide for the most cost-effective approach to attainment. They argue EPA and States should develop cost-effectiveness guidance that includes all stationary source control measures and they should develop SIPs based on the most economic means to attain the standard. They make several arguments to support this position. The commenters asserted that if an EGU control is more cost-effective than a non-EGU control, the EGU should be subject to ''beyond-CAIR'' controls. They also asserted that if EPA chooses to consider the CAIR rule as satisfying SO_2 and NO_X RACT for EGUs, then other sources should not be subjected to control costs greater than those found reasonable under CAIR (i.e., $800/ton). They believe it would be inequitable to require smaller sources to pay a higher cost for emissions reductions than larger sources, which are a more significant

contributor to the problem and which may be able to make more cost-effective emission reductions. One commenter also suggested that EPA should authorize a presumption that emissions reductions required on electric utilities under the CAIR will be equivalent to RACT only if a particular source in a CAIR State has installed controls that achieve the average level of control that EPA has projected will occur for the particular pollutant under the CAIR requirements.

Response: The EPA has determined that implementation of the CAIR trading program represents highly cost-effective controls that will achieve widespread regional SO_2 and NO_X emissions reductions from EGUs and will provide significant air quality benefits for ozone and $PM_{2.5}$ nonattainment areas. In developing attainment SIPs and identifying RACM, States will need to consider additional cost-effective and reasonable controls to reach attainment as expeditiously as practicable. The EPA does not agree with the commenter's argument that controls on non-EGUs should be no more than the projected cost of EGU controls under CAIR. The EPA expects that in order to achieve attainment as expeditiously as practicable, some States may need to adopt control measures for some sources which cost more per ton but which still are considered to be reasonable and cost-effective.

In addition, States must consider the economic feasibility of implementing a given control measure. Because of facility-specific factors, EPA believes it would be inappropriate to establish a threshold of control effectiveness (e.g. dollars per ton) based on control of EGUs and apply this threshold to all source categories. The ability of a source to cost-effectively reduce emissions is dependent on case-specific factors, including the ability of the given source to sustain the cost of control, and prevailing costs in the specific geographical location. A direct correlation between the size of an emissions source and the economic feasibility of controls for that source and location does not necessarily exist.

We also disagree with the commenter who suggests that RACT requirements should only be satisfied if a source achieves an average level of control that EPA projects to occur under CAIR. The EPA maintains that the presumption that CAIR satisfies SO_2 and NO_X RACT/RACM for EGUs in most areas is an appropriate policy. As discussed further below, we have always recognized that States could determine RACT for a single source or group of sources.

Comment: A number of commenters opposed the proposed determination that CAIR would satisfy the SO_2 and NO_X RACT requirement for EGUs. The commenters argued that this determination is unlawful, that it does not comply with section 172(c)(1) of the CAA which requires RACT (i.e. controls that are technologically and economically feasible) ''at a minimum'' for all existing sources in the nonattainment area, that it would allow very large stationary sources to escape cost-effective controls entirely, and that it is largely based on the legally-irrelevant contention that CAIR will reduce emissions more cost-effectively than RACT. They claim that EPA has no authority to displace the Congressionally-mandated RACT requirement, that CAIR was designed to address regional pollution transport (not to be an attainment strategy), and that EPA should remove these proposed provisions in the final rule. Commenters claim that the EPA's proposed approach to allow EGU emissions to be addressed solely through CAIR would undermine states' efforts to meet the Federal $PM_{2.5}$ health standard, particularly when EGU sources are among the most cost-effective to control. Another commenter claimed that EPA's proposal allowing States that choose to fulfill their CAIR requirements entirely through emission reductions from EGUs to also use CAIR to satisfy their SO_2 and NO_X $PM_{2.5}$ RACT requirements, thereby equating these two requirements for the EGU sector, is flawed. This commenter argued that allowing a cap-and-trade program, such as the CAIR, to substitute for the RACT requirement undermines the effectiveness of the controls by allowing facilities to use allowances to offset emissions, rather than control them at the source. The purchase of allowances, they assert, does not satisfy RACT requirements.

Response: The EPA disagrees with these comments. The final rule does not displace the RACT requirement for any sources. Instead, EPA is exercising its authority to interpret the section 172 RACT and RACM requirements for the purposes of implementing the 1997 $PM_{2.5}$ standards. For the reasons described in section (b) above, we believe that States can rely on EPA's presumption that compliance with a CAIR SIP or FIP, meeting certain requirements, will satisfy the RACT/RACM requirement for certain EGU sources. The EPA historically issued control technology guidelines setting forth presumptive levels of emissions control that satisfy the RACT requirement for a given industry. The final rule is similar to this practice in establishing a presumption that SO_2 and NO_X reductions under the CAIR program satisfy the RACT/RACM requirement for EGUs in CAIR States. In identifying reasonably available control measures to ensure attainment as expeditiously as practicable, States will need to take CAIR reductions into account as well as any additional cost-effective reductions that are technologically and reasonably available.

We further find that the attempt by many commenters to characterize CAIR as a strategy to address only regional pollution transport and not an attainment strategy as overly simplistic. The EPA analyses for CAIR show that there are significant air quality benefits projected for individual nonattainment areas as a result of SO_2 and NO_X reductions across the multistate CAIR region. The Act does not prevent States from properly crediting measures that achieve multiple objectives (e.g. regional transport or local nonattainment). Moreover, Section 110(a)(2)(D) requires SIPs to contain adequate provisions to assure that sources in the State do not contribute significantly to nonattainment in any other State. The CAIR rule is an integral element in meeting the States' Section 110 attainment obligations. Accordingly, it is reasonable to incorporate this consideration in determining what measures qualify as RACT/RACM.

Finally, EPA does not interpret the provisions of Section 172(c)(1) related to the RACT requirement as precluding States' use of a cap and trade approach as a means of regulating existing sources and achieving RACT/RACM reductions, especially in light of Congresses' expressed authorization to auction emission rights in Section 172(c)(6).

The EPA has long recognized that RACT need not apply to individual sources. As stated earlier, our early guidance on RACT requirements stated that States could establish RACT for an ''individual sources or *a group of sources.*'' (emphasis added) See Memo. Strelow (Dec. 1976) and 44 FR 71779. Importantly, Congress ratified the early interpretations of RACT and RACM when it enacted the 1990 Amendments. See 42 U.S.C. Section 7515 (Clean Air Act section 193). Our 1986 emissions trading policy also recognized a number of advantages offered through application of a ''bubble'' approach including faster compliance with RACT limits and earlier reductions. Moreover, Courts have upheld EPA's approval of States' use of ''bubbling'' multiple units to meet RACT requirements. See e.g.

Natural Resources Defense Council v. *EPA*, 941 F.2d 1207 (finding that EPA need not adhere to a source specific RACT determination to satisfy RACT requirements and acknowledging EPA's special knowledge and expertise in the area.)

Comment: The EPA's proposal to allow EGU emissions to be addressed solely through CAIR undermines prospectively States' efforts to meet the Federal $PM_{2.5}$ health standard. EGU sources are among the most cost-effective to control.

Response: For the reasons described in section (b) above, EPA believes that States can rely on EPA's presumption that compliance with a CAIR SIP or FIP, meeting certain requirements, satisfies the SO_2 and NO_X RACT/RACM requirement for certain EGU sources. Areas can require ''beyond CAIR'' EGU controls if a State determines that it is a necessary and reasonable means to attain as expeditiously as practicable. Nonetheless, as discussed above, EPA believes that implementation of the CAIR requirements will provide for substantial progress in attaining the $PM_{2.5}$ standards and that States may presume that RACT/RACM requirements are equal to the CAIR level of control.

Comment: CAIR fails to address the need for short-term reductions in $PM_{2.5}$ and precursor emissions on high pollution days. While RACT restricts emissions over a 1-hour to 24-hour period, CAIR only provides for an annual or seasonal cap. Reliance on CAIR therefore fails to recognize the importance of reducing short-term emissions, which was recently highlighted by the EPA's own proposal to tighten the 24-hour $PM_{2.5}$ health standard. Local and short-term adverse air quality effects of $PM_{2.5}$, must be addressed in the final rule by requiring RACT for all major facilities in addition to CAIR.

Response: The CAIR program is oriented toward reducing SO_2 and NO_X emissions in order to reduce air quality concentrations on an annual and seasonal basis. Because all $PM_{2.5}$ nonattainment areas were designated due to violations of the annual standard (and the two designated areas in California also violated the 24-hour standard), the focus of this implementation rule is attainment of the annual standard. CAIR is projected to provide significant air quality benefits in 2010 and 2015 for eastern $PM_{2.5}$ nonattainment areas on both an annual basis and on a 98th percentile 24-hour basis.[41]

Comment: The proposal is silent on the issue of whether EGUs are subject to direct $PM_{2.5}$ emissions RACT requirements. It is critical that RACT be required for all facilities with respect direct $PM_{2.5}$ emissions, regardless of a facility's participation in CAIR.

Response: In the final rule and preamble, EPA has clarified that all EGUs in nonattainment areas are subject to RACT/RACM for direct $PM_{2.5}$ emissions. The presumption described above applies only to SO_2 and NO_X RACT/RACM, not RACT/RACM for direct $PM_{2.5}$ emissions from EGUs.

Comment: The EPA fails to consider the geographical distributional impacts of the emission reductions. Equating CAIR with RACT fails to take into account the substantial contribution that emissions from EGUs within a nonattainment area may make toward that area's $PM_{2.5}$ nonattainment problem. The EPA does not attempt to explain how such a generalized determination satisfies RACT for $PM_{2.5}$.

Response: The establishment of recommended levels for RACT/RACM is an area Congress delegated to the specific expertise of the Agency. Based on our analysis, we conclude that the CAIR emissions caps presumptively represent the level of emissions control achievable through application of ''reasonably available'' control technologies. Nonetheless, in developing attainment plans, each State will evaluate the impact of stationary sources located within the nonattainment area in developing its attainment strategies for the local area.

Comment: A few commenters stated that EPA should explain how this proposal would be implemented for States that request an extension of an attainment date because attaining in 5 years or less is impracticable; i.e., whether EPA would still hold to its interpretation that CAIR equals RACT for EGUs and not require additional reductions from EGUs even if an area cannot attain in 5 years and controls on EGUs could lead it to attain more expeditiously. These commenters argue that, in considering if additional RACT is needed in states that obtain extensions of the attainment deadline after 2010, EPA cannot ignore potential RACT for electric generating units any more than they would be allowed legally to avoid consideration of any other RACT candidates. One commenter is particularly concerned that States would not include EGUs in their RACT determinations and instead require smaller industrial boilers or process heaters to control emissions.

Response: The EPA's determination regarding CAIR and RACT is not limited to areas attaining within five years. The Agency's rationale is presented in the ''final rule'' section above. We disagree that the CAIR–RACT presumptions necessarily shift emission control burdens from EGUs to smaller industry boilers and process heaters because, in implementing the RACM requirement, the State may include an evaluation of control options on those sources as part of their RACT/RACM analyses. As stated above, EPA concluded that the CAIR compliance dates represent an aggressive schedule that reflects the limitations of the labor pool, and equipment/vendor availability, and need for electrical generation reliability for installation of emission controls. Accordingly, additional controls on EGUs may not be a reasonably available control measure that can be effectively implemented in a manner that advances an area's attainment date.

Comment: The EPA designated many partial counties nonattainment for $PM_{2.5}$ solely because the areas contained EGU emission sources thought to cause or contribute to violations of the NAAQS. In implementing attainment plans, it makes sense to consider further control of these sources, and because they are located in nonattainment areas, the ability to do so is provided for and legal under the CAA.

Response: The EPA designated $PM_{2.5}$ nonattainment counties because they either had a violating monitor or they contributed to a nearby air quality problem. Importantly, EPA designated these areas without considering the air quality benefits expected in the future from CAIR. Accordingly, the fact that an EGU is located in a partial county and we included the partial county in the nonattainment area because we believe that the EGU was causing or contributing to the nonattainment violations, does not equate with a finding that more than CAIR is required to remedy the nonattainment problem. Nonetheless, EPA believes that States should evaluate the impact of stationary sources in all designated counties, including those partial counties noted by the commenter, in its assessment of reasonably available control strategies to ensure attainment as expeditiously as practicable.

Comment: The EPA should adopt the Ozone Transport Commission's (OTC's) approach to cap-and-trade programs. When the OTC developed its NO_X

[41] See the regulatory impact analysis chapter on air quality for the 2006 PM NAAQS review at *http://www.epa.gov/ttn/ecas/regdata/RIAs/Chapter%204-Air%20Quality.pdf*.

Budget Program (which was the basis for EPA's NO_X SIP call and subsequently CAIR), it assumed that RACT was applied first. Thus the cap-and-trade program operated in an environment that assumed RACT was in force, not in lieu of RACT.

Response: Under the ozone national ambient air quality standards, NO_X and VOC RACT have been implemented progressively for the past 30 years or more, prior to development of the NO_X SIP call regional control program. In contrast, the $PM_{2.5}$ implementation program is the first instance in which we have required RACT/RACM specifically for fine particle pollution. For this reason, the CAIR program is not operating with SO_2 and NO_X RACT limits already in place for attainment of the $PM_{2.5}$ standards. Nonetheless, as discussed above, EPA believes that implementation of the CAIR requirements will provide for substantial progress in attaining the $PM_{2.5}$ standards and that States may presume that RACT/RACM requirements are equal to the CAIR level of control.

Comment: A few commenters stated that EPA should clarify and modify the part of its proposal that explains why a State cannot rely on EPA's determination that CAIR can satisfy the NO_X RACT requirement for $PM_{2.5}$ if the State ''elect[s] to allow non-EGU sources to voluntarily enter the EPA-administered CAIR trading program through an opt-in provision in the CAIR model rule.'' (70 FR 66025 col. 3). These commenters believe that this part of the proposal might be construed to preclude States subject to both the NO_X SIP Call and included in the CAIR region for ozone from relying on the NO_X RACT determination for $PM_{2.5}$ if the States choose ''to bring their non-CAIR [including non-EGU] NO_X SIP Call trading sources into the CAIR ozone season NO_X cap and trade program.'' (70 FR 49708, 49728 col. 3) (August 24, 2005). The commenters assert that EPA gave States the option of bringing non-EGU NO_X SIP Call sources into the CAIR seasonal NO_X trading program to ensure that non-CAIR sources, including non-EGUs, that are subject to the NO_X SIP Call rule would not be ''stranded,'' starting in 2009, by being left in an ozone season NO_X control program with no EGU trading partners. The commenters argued that ''EGUs should not be penalized, in the form of denial of CAIR–RACT treatment, as a result of States exercising their option to avoid financial and compliance difficulties for non-EGUs that otherwise would be left without allowance trading partners in the EGU sector after the NO_X SIP Call trading program ends in 2008.'' These commenters point to EPA's determination in the final Phase 2 ozone implementation rule, that participation in the CAIR trading programs can satisfy NO_X RACT for ozone even if a State brings non-EGUs in the NO_X SIP Call trading program into the trading program after 2008, *see* 70 FR 71657 col. 2, provided the State retains an ''EGU [emission] budget under CAIR that is at least as restrictive as the EGU budget that was set in the State's NO_X SIP call SIP,'' id. At 71658 col. 1. These commenters argue that EPA should make a similar determination here regarding NO_X RACT for purposes of $PM_{2.5}$ NAAQS implementation.

Response: All states with EPA approved CAIR SIPs or subject to a CAIR FIP implementing the annual NO_X emission reduction requirements, and obtaining those reductions solely from EGUs may rely on EPA's determination that CAIR presumptively satisfies NO_X RACT/RACM for $PM_{2.5}$ for these sources. This determination is unaffected by whether or not a State permits NO_X SIP Call non-EGUs to participate in the CAIR ozone season trading program. In the final rule, we have included the presumption that NO_X RACT/RACM for $PM_{2.5}$ is satisfied for EGUs complying with a CAIR SIP or CAIR FIP implementing the annual CAIR NO_X emission reduction requirements (provided the State implementation of the CAIR NO_X annual trading program includes EGUs only).[42]

In the final ozone implementation rule, EPA addressed numerous issues relating to the transition from the NO_X SIP Call to the CAIR ozone season trading program, including the impact of bringing NO_X SIP Call non-EGUs into the CAIR ozone season trading program. Commenters' suggestion that these determinations are relevant to this $PM_{2.5}$ implementation rule ignores the fact that both the NO_X SIP Call and the CAIR ozone season trading program are seasonal, not annual, trading programs. The NO_X SIP Call EGU and non-EGU budgets are seasonal NO_X budgets and do not address annual NO_X emissions. As discussed above, $PM_{2.5}$ levels year-round contribute to an area's annual average concentration, and NO_X emissions during non-summer months contribute to nitrate concentrations, which are typically highest in cooler temperatures. For these reasons, EPA believes it would be inappropriate to accept commenters' suggestion.

8. What Are the Required Dates for Submission and Implementation of RACT?

a. Background

The EPA requested comment on a general approach for the dates for submission and implementation of RACT rules. The final rule retains the proposed approach, as described in the following section.

b. Final Rule

The final rule requires the following:

(1) Date of submission. States must submit adopted RACT rules to EPA within 3 years of designation, at the same time as the attainment demonstration due in April 2008.

(2) Dates for implementation of control measures. States should also implement any measures determined to be RACT expeditiously, as required by section 172. Implementation of RACT measures should in no case start later than the beginning of the year before the nominal attainment date. For example, if an area has an attainment date of April 2010, then any required RACT measures should be in place and operating no later than the beginning of 2009. This is intended to help provide for clean air in calendar year 2009. As discussed in section II.D, if other criteria are also met, EPA could then grant the area a 1-year attainment date extension if the air quality level in the 3rd of the 3 years was below the level of the standard. If the area observes a second year of clean air, EPA could grant a second 1-year attainment date extension. In this case, the 2009 to 2011 period would then be reviewed to assess whether the area attains the standards.

(3) Provisions for a demonstration that additional time is needed. While EPA expects that States will implement required RACT controls by January 2009 in most situations, there may be cases where additional time is needed to implement an innovative control measure or to achieve a greater level of reduction through a phased approach. If a State has provided an adequate demonstration showing that an attainment date extension would be appropriate for an area, then the State may consider phasing-in certain RACT controls after January 2009. The EPA would allow the implementation of selected RACT controls after January 2009 if the State can show why additional time is needed for

[42] EPA's CAIR–RACT presumption also would not apply if a State required sources other than EGUs to achieve a portion of the reductions required by CAIR (e.g., the State's CAIR SIP achieved some reductions from EGUs but took credit for non-EGU reductions achieved under new, more stringent requirements implemented to meet NO_X SIP call caps). Under the CAIR rule such a State would not be eligible to participate in the EPA-administered CAIR trading system.

implementation, and such delayed implementation still would need to be on a schedule that provides for expeditious attainment. In no event could the State wait to implement RACT controls until the last few years prior to the attainment date without an adequate rationale for why earlier implementation was not feasible.

c. Comments and Responses

Comment: One commenter supported EPA's position that implementation of RACT and RACM by January 1, 2009 is necessary to achieve the effect on air quality for calendar year 2009.

Response: The EPA agrees with this comment.

Comment: Some commenters supported allowing for an implementation schedule that allowed for implementation of RACT and RACM for a time frame extending beyond 2009. These commenters favored such an approach if States provided an adequate demonstration of why the measures cannot be implemented earlier. Commenters noted that a phased approach to emissions reductions in some cases could lead to additional reductions that could not occur by 2009.

Response: The EPA agrees with these comments.

Comment: One commenter believed that so long as a State demonstrates attainment by 2015, EPA should not require implementation of any RACT measures. The commenter further asserted that it would be bad policy to require costly emissions reductions through imposition of RACT on areas expected to attain the standards through other means by 2015.

Response: The EPA disagrees with this comment. The CAA requires States to demonstrate that the attainment plan will attain the standards as expeditiously as practicable and must include RACT and RACM. The requirement for ''reasonable'' measures does not require that any theoretical measure be implemented, but does require implementation of those reasonable measures which could advance the attainment date by at least 1 year. Given the health effects associated with $PM_{2.5}$, EPA believes this approach is sound public policy.

9. Which Pollutants Must Be Addressed by States in Establishing RACT and RACM Limits in Their $PM_{2.5}$ Attainment Plans?

a. Background

In the proposed rule, and in the final rule as discussed in detail in section II.A above, EPA discusses the pollutants which States must address in the attainment plans, in particular with respect to RACT, RACM and NSR. These pollutants include not only direct $PM_{2.5}$, but also gaseous precursors to the formation of $PM_{2.5}$. In general, the decisions that States and EPA make with respect to which precursors are significant contributors to an area's $PM_{2.5}$ nonattainment problem define the pollutants and sources to be addressed by States in developing RACT and RACM.

b. Final Rule

In the final rule, in establishing RACT and RACM limits, those RACT and RACM limits must address:

—Direct emissions of $PM_{2.5}$
—SO_2, a precursor to $PM_{2.5}$ formation, and
—NO_X, unless a State makes a finding that NO_X emissions from sources in the State do not significantly contribute to the $PM_{2.5}$ problem in a given nonattainment area.

The EPA generally presumes that RACT and RACM limits are not needed for ammonia or VOC unless that State or EPA determines otherwise for a given nonattainment area. RACT and RACM limits are needed for ammonia if a State or EPA makes a finding that ammonia emissions significantly contribute to the $PM_{2.5}$ problem in a given nonattainment area, and thus finds that control of ammonia would help address the $PM_{2.5}$ problem. RACT and RACM limits are needed for VOC only if a State or EPA makes a finding that VOC emissions significantly contribute to the $PM_{2.5}$ problem in a given nonattainment area. (As a point of clarification, ''VOCs,'' which are gaseous organic precursors to the chemical formation of secondary organic aerosol, are treated differently from semivolatile or nonvolatile organic compounds which are addressed as directly emitted $PM_{2.5}$). Issues related to the finding of ''significant contribution'' for these pollutants are discussed in Section II.A above.

10. Under the $PM_{2.5}$ Implementation Program, When Does a State Need To Conduct a RACT Determination for an Applicable Source That Already Has a RACT, BACT, LAER, or MACT Determination in Effect?

a. Background

For $PM_{2.5}$ nonattainment areas, States are required to implement the RACT requirement to reduce emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors from applicable sources. The EPA anticipates that for some sources located in $PM_{2.5}$ nonattainment areas, the State would have previously conducted RACT determinations for VOC or NO_X under the 1-hour ozone standard, or for direct PM_{10} emissions under the PM_{10} standards. Some of the RACT determinations established under these other programs would be relatively recent while other determinations may be more than 10 years old. In some cases, a new RACT determination might reach the conclusion that the preexisting determination is still valid and would require the installation of similar control technology because the relevant pollutant was addressed, the same emission points were reviewed, and the same fundamental control techniques would still have similar costs. In other cases, however, a new RACT analysis could determine, for example, that better technology has become available, and that cost-effective emission reductions are achievable.

In the proposed rule, the EPA requested comments on a general approach to taking prior RACT determinations into account, and within the general approach, invited comments on two specific questions: (1) Should new RACT determinations be required for all existing determinations that are older than a specified amount of time (such as 10 years old)?; and (2) what supporting information should a State be required to submit as part of its certification to demonstrate that a previous RACT analysis meets the RACT requirement currently for purposes of the $PM_{2.5}$ program?

In the proposed rule, EPA also noted that sources subject to RACT may also have been subject to other prior technology determinations such as BACT, LAER or MACT determinations. The proposed rule requested comment on approaches to taking these prior technology determinations into account.

b. Final Rule

The EPA has determined that it is appropriate to follow the approach in the proposed rule, which is described below. State RACT SIPs for $PM_{2.5}$ must assure that RACT is met, either through a new RACT determination or a certification that previously required RACT controls represent RACT for $PM_{2.5}$.

Where a State adopted and EPA approved a control measure as RACT for a pollutant emitted from a specific stationary source or source category under another NAAQS program, the State may submit as part of its SIP revision a certification, with appropriate supporting information, that the previous determination represents a current RACT level of control for those emissions for purposes of the $PM_{2.5}$ program. Otherwise, the State should revise the SIP to reflect a modified

RACT requirement for specific sources or source categories.

In cases where the State's prior RACT analysis under another NAAQS program concluded that no additional controls were necessary, a new RACT determination is required for that source. In cases where the previous RACT determination did not require any controls on the source, it is more likely that a new review might find that emission controls are now economically and technically feasible. This is because emissions reductions from a potential control measure are likely to be greater, and the cost per ton of emission reduction is likely to be lower, than in the case of a source that previously installed controls to meet RACT under another program.

A RACT determination for a source or source category subject to a prior RACT determination is also required for any pollutants that were not the subject of the prior RACT determination, but which the State has determined should be regulated for purposes of $PM_{2.5}$. The EPA advises that the State should closely review any existing RACT determinations established under another NAAQS program. For RACT certifications and determinations, States are to consider new information that has become available since the earlier RACT determination. For example, where updated information on control technologies is presented as part of notice-and-comment rulemaking, including a RACT SIP submittal for sources previously controlled, States (and EPA) must consider the additional information as part of that rulemaking. Existing EPA guidance on control technologies can be used to help inform RACT decisions. However, EPA believes it may not be sufficient for a State to rely on technology guidance that is several years old and issued to provide recommendations on control measures and levels for a different NAAQS in evaluating RACT for $PM_{2.5}$.

With respect to prior technology determinations other than RACT, the final rule provides that:

(1) Prior BACT and LAER Determinations. In many cases, but not all, best available retrofit technology (BACT) or lowest achievable emission rate (LAER) provisions for new sources would assure at least RACT level controls on such sources. The BACT/LAER analyses do not automatically ensure compliance with RACT since the regulated pollutant or source applicability may differ and the analyses may be conducted many years apart. States may, however, rely on information gathered from prior BACT or LAER analyses for the purposes of showing that a source has met RACT to the extent the information remains valid. We believe that the same logic holds true for emissions standards for municipal waste incinerators under CAA section 111(d) and NSR/PSD settlement agreements. Where the State is relying on these standards to represent a RACT level of control, the State should present its analysis with its determination during the SIP adoption process.

(2) Compliance With MACT Standards Affecting VOC. In situations where the State has determined VOC to be a significant contributor to $PM_{2.5}$ formation in an area, compliance with MACT standards may be considered in VOC RACT determinations. For VOC sources subject to MACT standards, States may streamline their RACT analysis by including a discussion of the MACT controls and relevant factors such as whether VOCs are well controlled under the relevant MACT air toxics standard, which units at the facility have MACT controls, and whether any major new developments in technologies or costs have occurred subsequent to establishment of the MACT standards. We believe that there are many VOC sources that are well controlled (e.g., through add-on controls or through substitution of non-VOC non-HAP materials for VOC HAP materials) because they are regulated by the MACT standards, which EPA developed under CAA section 112. Any source subject to MACT standards must meet a level that is as stringent as the best-controlled 12 percent of sources in the industry. Examples of these HAP sources that may effectively control VOC emissions include organic chemical plants subject to the hazardous organic NESHAP (HON), pharmaceutical production facilities, and petroleum refineries.[43] We believe that, in many cases, it will be unlikely that States will identify VOC emission controls more stringent than the MACT standards that are not prohibitively expensive and are thus unreasonable. We noted our view that this will allow States, in many cases, to conclude that the control measures implemented to meet MACT standards satisfy any requirement for VOC RACT.

(3) Compliance With MACT Standards Affecting $PM_{2.5}$ Emissions. Compliance with MACT standards may be considered in direct $PM_{2.5}$ RACT determinations. For direct $PM_{2.5}$ sources subject to MACT standards, States may streamline their RACT analysis by including a discussion of the MACT controls and relevant factors such as whether $PM_{2.5}$ emissions are well controlled under the relevant MACT air toxics standard, which units at the facility have MACT controls, and whether any major new developments in technologies or costs have occurred subsequent to the MACT standards. We believe that there are many direct $PM_{2.5}$ sources that are well controlled (e.g., through add-on controls that represent state-of-the-art measures for $PM_{2.5}$ reduction) because they are regulated by the MACT standards which EPA developed under CAA section 112. For some MACT standards, $PM_{2.5}$ is used as a surrogate for achieving MACT for HAPs such as heavy metals. Any source subject to MACT standards must meet a level that is as stringent as the best-controlled 12 percent of sources in the industry. We believe that there will be sources for which it will be unlikely that States will identify emission controls more stringent than the MACT standards that are not prohibitively expensive and are thus unreasonable. In addressing whether a MACT standard represents best controls for $PM_{2.5}$, it is important that the State consider all $PM_{2.5}$ sources at a given facility and the nature of the PM limit (i.e., whether the limit ensures control of the fine fraction of particulate matter). Also, the State should evaluate the degree of capture of $PM_{2.5}$—that is, the amount of $PM_{2.5}$ that is collected and sent to a pollution control device in addition to the efficiency of the device itself. This evaluation should consider the $PM_{2.5}$ emissions reductions that could be achieved by improving the degree of capture.

(4) Year-Round Controls for NO_X. In some cases, sources subject to NO_X RACT for PM will also be subject to controls under the NO_X SIP Call. In the 8-hour ozone implementation rule, EPA concluded that certain sources which have installed emission controls to comply with the NO_X SIP call would be deemed to meet NO_X RACT for the purposes of the 8-hour ozone implementation program. Some of these sources subject to the NO_X SIP call may choose to control NO_X emissions only or primarily during the ozone season. For purposes of $PM_{2.5}$, however, EPA concludes that the operation of emission controls only or primarily during the ozone season would not constitute RACT for $PM_{2.5}$ purposes. Indeed $PM_{2.5}$ control programs must address annual average concentrations, and in many

[43] There are some MACT categories for which it may not be possible to determine the degree of VOC reductions from the MACT standard without additional analysis; for example, the miscellaneous metal parts and products (40 CFR part 60, subpart MMMM) due to the uncertainty of the compliance method that will be selected.

areas nitrate concentrations are generally highest in the winter. Therefore, RACT for $PM_{2.5}$ is year-round operation of controls. For sources subject to both the NO_X SIP call and NO_X RACT for PM, we believe that, in most cases, the additional costs of running the NO_X SIP call controls year-round would impose only modest, reasonable additional costs and the cost effectiveness would be better than the average cost effectiveness for many other sources subject to PM RACT. (See further discussion in section F.7 above related to EGU sources subject to CAIR requirements for NO_X).

c. Comments and Responses

Comments: A number of commenters agreed with the requirement for the State to conduct a new RACT determination for any source for which the State's prior RACT analysis under another NAAQS program concluded that RACT was defined as no additional controls. One commenter noted that for a source having a previous RACT determination for ozone or PM_{10} to show that its level of control currently meets RACT for $PM_{2.5}$ purposes, the source must provide supporting documentation showing that the previous RACT determination was based on the same universe of controls that are ''reasonably available'' for the source in the present day.

Response: The EPA agrees with these comments.

Comments: A few commenters recommended that EPA clarify that RACT determinations resulting only in ''operational changes'' should be treated in an equivalent manner as those resulting in no controls. The commenters suggested that, unlike ''physical modification,'' such operational changes should always be revisited with a new RACT determination.

Response: The EPA does not agree with the implicit recommendation to impose different RACT review requirements based on the types of control previously implemented. The EPA believes that a reassessment of RACT is warranted, irrespective of the type of control previously implemented, to consider the reasonableness of modifying or adding controls in the particular circumstances. Furthermore, we are concerned that making such a distinction based upon the fairly broad term ''operational change'' would be difficult to interpret and implement, and would invite unnecessary disputes concerning the application of the term.

Comment: Commenters differed on whether new RACT determinations should be required for all existing determinations made before a specific date, and on what that date should be. Some commenters recommended that EPA allow States to rely on any previous RACT determinations made after 1990, and one commenter recommended that EPA require States to review only those older than 10–15 years, another recommended 10 years. One commenter believed that a 15-year period would be reasonable where previous controls were installed, to allow for a 15-year amortization of the cost of those controls. Other commenters recommended that new RACT determinations be made for any RACT determinations older than 5 years. Another commenter recommended that all RACT determinations should be reviewed.

Response: The EPA has not included any specific time frame in the final rule. The EPA agrees that the more recent the RACT determination, the greater the probability that technology advances or decreases in control cost will not have occurred. At the same time, technology advances and decreases in control cost can and have occurred frequently. Accordingly, we believe it is necessary for States to review whether such technology advances or decreases in control cost have occurred before relying on previous RACT determinations. We do not believe there is any specific date or age that could be identified after which States could ensure that no technology advances or decreases in control cost will have occurred.

Comment: A number of commenters expressed concerns with the resources required to conduct the certifications required by the proposed approach, and argued that expending the resources required to review and to certify previous RACT determinations would not be productive. One commenter recommended that EPA provide guidance on the previous RACT categories for which old RACT determinations are believed to be out of date. Another commenter asserted that the only possible exception to the acceptability of previous RACT measures for purposes of the ozone standards would be when the new RACT is year-round for an existing ozone-season RACT measure.

Response: The EPA believes that the proposed certification approach strikes an appropriate balance in requiring States to verify whether previous RACT determinations currently represent an appropriate RACT level of control for $PM_{2.5}$ purposes, while stopping short of requiring an exhaustive re-analysis for all RACT sources. The EPA believes that much of the resource concerns expressed in comments were based upon concerns that VOC sources are very numerous, and that this approach would require detailed review for these sources. As noted previously, a RACT analysis for VOC sources is required only if a State makes a finding that VOC sources significantly contribute to nonattainment in the State. We believe the commenters likely overestimate the resource implications of the certification process for prior RACT determinations. Another mitigating factor is that many of these same sources would be reviewed for purposes of implementing the eight-hour ozone standard. On the other hand, where a State or EPA determines that it is appropriate to regulate VOC sources for $PM_{2.5}$, EPA believes that it likely would be productive to review the previous determination for such sources, some of which have not been reviewed for many years.

Comment: One commenter believed that EPA should acknowledge detailed RACT and RACM analyses for the South Coast and San Joaquin Valley in California prepared during the 1990s for purposes of implementing the ozone and PM_{10} standards. The commenter believes that EPA acceptance of these determinations as RACT for $PM_{2.5}$ would enable States to focus resources on developing new measures needed for attainment.

Response: The EPA agrees that States should focus resources on new technologies and new developments. At the same time, EPA recognizes that for most source categories, new technology continues to be developed, and new information continues to be generated. Thus, even recent RACT determinations for a given source category may be outdated. Hence, the certification approach in the rule for the relevant sources or source categories is a reasonable approach which is designed to provide for the type of focused efforts suggested by the commenter.

Comment: One commenter believed that a State certification should only have to identify the existing RACT levels in a SIP and pollutants affected, but the State should not be required to provide any additional information.

Response: The EPA disagrees with this comment. The EPA believes that prior technology determinations should be taken into account in the RACT determination process. In reviewing existing RACT determinations, the State should provide supporting information to show that the existing technology in use should still be considered RACT, or it should show that there have been technology advances or cost reductions that have occurred since the previous

RACT limits were developed that make lower emissions technically and economically feasible in the context of RACT and would contribute to advancing the attainment date by at least one year.

Comment: Some commenters supported EPA's requirement for year-round operation of NO_X pollution control devices as RACT, given that $PM_{2.5}$ is an annual standard, while ozone is a summertime problem.

Response: The EPA agrees with these comments.

Comment: One commenter concluded that BACT and LAER determinations should be considered to satisfy RACT, regardless of the date they were made, because BACT and LAER by definition are more stringent than RACT.

Response: The EPA disagrees with this comment. The EPA believes that in many cases, but not all, BACT and LAER would assure RACT level of controls. Reasons that BACT and LAER might not satisfy RACT include: The pollutant of concern could have been different, the applicability threshold for BACT and LAER may have excluded smaller sources potentially subject to RACT controls, and technology advances or reductions in control costs may have occurred since the old determination was conducted.

Comment: One commenter recommended that EPA allow States to use information gathered from prior BACT or LAER analyses to complete the RACT determination, as was allowed in the 8-hour ozone NAAQS implementation rule.

Response: The final rule allows for use of such information, to the extent it remains valid, to inform a certification by the State that BACT or LAER technology continues to exceed what would currently be considered RACT.

Comment: Some commenters argued that any MACT determination that controls the pollutants of concern should be more than sufficient to satisfy RACT. Some commenters made similar recommendations regarding specific standards where PM limits were developed as a surrogate for HAPs, such as the MACT standard for integrated iron and steel mills, the MACT standard for iron and steel foundries, and the section 129 standards for waste to energy facilities.

Response: While agreeing that MACT controls are relevant, the EPA disagrees that all MACT determinations should be automatically considered to satisfy RACT. Reasons include: A MACT standard aimed at toxics might not ensure that the relevant $PM_{2.5}$ pollutant(s) are well controlled, MACT applicability provisions might have excluded units potentially subject to RACT, and technology advances or reductions in control costs might have occurred since EPA conducted the MACT analysis. The EPA believes that the State should review whether technology advances have occurred including available ''beyond the MACT floor'' technologies that may be reasonable in the context of RACT for $PM_{2.5}$ nonattainment, but which were not selected as MACT for purposes of implementing section 112. The EPA believes that RACT analyses should evaluate whether increased capture of $PM_{2.5}$ could be achieved, and whether an increased efficiency in controlling the fine fraction of particulate matter is reasonably available. The EPA has, however, added a specific recognition that MACT standards can reduce $PM_{2.5}$ as well as VOC, and that $PM_{2.5}$ information gathered for MACT standards development may inform a State's conclusions on available technologies for direct $PM_{2.5}$ emissions.

Comment: One commenter expressed a concern that EPA should not presume that MACT represents RACT where the MACT rule allows for a risk-based exemption from the control technology requirement.

Response: The EPA agrees with this comment.

11. How Should Condensable Emissions Be Treated in RACT Determinations?

a. Background

Certain commercial or industrial activities involving high temperature processes (fuel combustion, metal processing, cooking operations, etc.) emit gaseous pollutants into the ambient air which rapidly condense into particle form. The constituents of these condensed particles include, but are not limited to, organic material, sulfuric acid, and metals. In general, condensable emissions are taken into account wherever possible in emission factors used to develop national emission inventories, and States are required under the consolidated emissions reporting rule (CERR) [44] to report condensable emissions in each inventory revision. Currently, some States have regulations requiring sources to quantify condensable emissions and to implement control measures for them, and others do not. In 1990, EPA promulgated Method 202 in Appendix M of 40 CFR Part 51 to quantify condensable particulate matter emissions. In the proposed rule, EPA discussed and requested comment on issues related to condensable emissions in RACT determinations.

In the proposed rule, we noted that EPA is in the process of developing detailed guidance on a new test method which quantifies and can be used to characterize the constituents of the $PM_{2.5}$ emissions including both the filterable and condensable portion of the emissions stream. We also noted that when a source implements either of these test methods addressing condensable emissions, the State will likely need to revise the source's emissions limit to account for those emissions that were previously unregulated. For the purposes of determining RACT applicability and establishing RACT emission limits, EPA indicated in the proposal that it intends to require the State to adopt the new test method once EPA issues its detailed guidance. This guidance would be for use by all sources within a $PM_{2.5}$ nonattainment area that are required to reduce emissions as part of the area's attainment strategy.

b. Final Rule

Issues and comments related to test method and emissions limit issues for direct $PM_{2.5}$ for RACT, including discussion of test methods for condensable $PM_{2.5}$, are discussed in section II.L.3 of this preamble. The EPA recognizes that in some cases condensable emissions are more difficult to control than filterable emissions. However, condensable emissions may be assumed to be almost entirely in the 2.5 micrometer range and smaller, so these emissions are inherently more significant for $PM_{2.5}$ than for prior particulate matter standards addressing larger particles. Therefore, EPA encourages States to consider the potential for reducing condensable emissions when evaluating potential measures for RACT.

12. What Criteria Should Be Met To Ensure Effective Regulations To Implement RACT and RACM?

a. Final Rule

After the State has identified a RACT or RACM measure for a particular nonattainment area, it must then implement that measure through a legally enforceable mechanism (e.g., a State rule approved into the SIP). The legally enforceable mechanism must meet four important criteria.

First, the baseline emissions from the source or group of sources and the future year projected emissions must be quantifiable so that the projected emissions reductions from the sources can be attributed to the specific

[44] The consolidated emissions reporting rule was published in the **Federal Register** on June 10, 2002, pages 39602–39616.

measures being implemented. It is important that the emissions from the source category in question are accurately represented in the baseline inventory so that emissions reductions are properly calculated. In particular, it is especially important to ensure that both the filterable and condensable components of $PM_{2.5}$ are accurately represented in the baseline since traditional Federal and State test methods have not included the condensable component of particulate matter emissions and have not required particle sizing of the filterable component.

Second, the control measures must be enforceable. This means that they must specify clear, unambiguous, and measurable requirements. When feasible, the measurable requirements for larger emitting facilities should include periodic source testing to establish the capability of such facilities to achieve the required emission level. Additionally, to verify the continued performance of the control measure, specific monitoring programs appropriate for the type of control measure employed and the level of emissions must be included to verify the continued performance of the control measure. The control measures and monitoring program must also have been adopted according to proper legal procedures.

Third, the measures must be replicable. This means that where a rule contains procedures for interpreting, changing, or determining compliance with the rule, the procedures are sufficiently specific and nonsubjective so that two independent entities applying the procedures would obtain the same result.

Fourth, the control measures must be accountable. This means, for example, that source-specific emission limits must be permanent and must reflect the assumptions used in the SIP demonstration. It also means that the SIP must establish requirements to track emission changes at sources and provide for corrective action if emissions reductions are not achieved according to the plan.

b. Comments and Responses

There were no comments on this section. The language above is very similar to the language in the proposal.

G. Reasonable Further Progress (RFP)

1. Background

Clean Air Act Section 172(c)(2) requires that plans for nonattainment areas ''shall require reasonable further progress,'' which as defined in Section 171(1) ''means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' This section describes the requirements the Administrator is establishing for states to achieve reasonable further progress.

In general terms, the goal of these RFP requirements is for areas to achieve generally linear progress toward attainment. The RFP requirements were included in the Clean Air Act to assure steady progress toward attaining air quality standards, as opposed to deferring implementation of all measures until the end date by which the standard is to be attained.

2. Requirements for Areas With Attainment Dates of 2010 or Earlier

a. Background

In 40 CFR 51.1009(b)(1) of the proposed rule, EPA proposed that a State which submits an implementation plan that demonstrates that an area will achieve attainment by 2010 (i.e., achieves attainment level emissions during 2009) would not be required to submit a separate reasonable further progress plan for that area. In such cases, EPA proposed that the attainment demonstration would also be considered to demonstrate that the area is achieving RFP.

b. Final Rule

In the final rule, EPA is maintaining the approach described in the proposed rule. An area that demonstrates attainment by 2010 will be considered to have satisfied the RFP requirement and need not submit any additional material to satisfy the RFP requirement. The EPA will view the attainment demonstration as also demonstrating that the area is making reasonable further progress toward attainment.

c. Comments and Responses

Comment: A number of commenters supported EPA's view that a demonstration of attainment by 2010 would also demonstrate that the area is making reasonable further progress toward attainment.

Response: The EPA appreciates the support and is adopting the supported approach.

Comment: A set of commenters objects to EPA's proposal, arguing that EPA cannot waive RFP requirements for areas where the state purports to demonstrate attainment. These commenters believe that Subpart 4 of Part D requires milestones prior to 2009, and these commenters believe that even Subpart 1 requires a demonstration of interim progress that EPA cannot waive.

Response: In brief, EPA is not waiving the RFP requirements for any area. Instead, EPA is concluding that a demonstration of attainment by 2010 also serves to demonstrate achievement of RFP. If the state submittal purports to demonstrate attainment but does not adequately make this demonstration, then the submittal also would not demonstrate achievement of RFP. The nature of the RFP requirement would then depend on whether the remedied attainment demonstration provides for attainment by 2010. Finally, as discussed above, EPA believes that Subpart 4 requirements do not apply to $PM_{2.5}$ plans. More detailed discussion of this comment and EPA's response are provided in the response to comments document.

3. Requirements for Areas With Attainment Dates Beyond 2010

a. Background

The proposed rule required a State to submit an RFP plan along with its attainment demonstration and SIP due in April 2008 for any area for which the State demonstrates that 2011 or later is the most expeditious attainment date. EPA proposed that the 2008 RFP plan must provide adequate emission reductions by 2009[45] and, in some cases, by 2012. The plan must demonstrate that emissions will decline in a manner that represents generally linear progress from the 2002 baseline year to the attainment year.

b. Final Rule

The final rule requires a State to submit an RFP plan along with its attainment demonstration and SIP due in April 2008 for any area for which the State justifies an extension of the attainment date beyond 2010. The RFP plan must provide emission reductions such that emissions in 2009 represent generally linear progress from the 2002 baseline year to the attainment year. Where the State justifies an extension of the attainment deadline to 2014 or 2015, the state must additionally provide emission reductions such that emissions in 2012 represent generally linear progress from the 2002 baseline year to the attainment year.

[45] The RFP test uses inventories for the full year, e.g. the year of 2009 or the year of 2012. EPA does not specifically require that the relevant measures be implemented by the beginning of the year, but RFP inventories must reflect the fact that measures that are implemented later in the year have correspondingly less impact on the year's annual total emissions.

If the State demonstrates that attainment will occur by 2010 or earlier, EPA will consider the attainment demonstration to demonstrate achievement of reasonable further progress, and the State will not be required to submit an additional RFP plan for the area.

c. Comments and Responses

Comment: For areas that demonstrate attainment by 2015 without adopting additional measures, a commenter recommended that the attainment demonstration be viewed as also demonstrating that the area is achieving RFP. The commenter therefore recommended that the state not be required to submit an RFP plan for such an area.

Response: A submittal that demonstrates attainment at the latest allowable date and does not address interim air quality fails to show that the path to attainment will yield interim incremental air quality improvements. States have ample opportunity to adopt measures that would provide interim air quality improvement long before 2015. Indeed, as discussed elsewhere as part of the discussion of attainment dates, a submittal that only addresses 2015 would also fail the attainment demonstration requirement, insofar as it would not be addressing whether attainment is as expeditious as practicable, because the submittal would fail to assess whether attainment could be achieved earlier. Therefore, irrespective of whether additional measures are needed to attain by 2015, the Clean Air Act mandates assessing progress at reasonable interim dates as well as mandating attainment.

4. Generally Linear Progress and Associated Timeline

a. Background

The EPA proposed that states with areas needing an extension of the attainment deadline beyond 2010 would be required to submit a plan demonstrating that emissions would be sufficiently reduced by 2009 to achieve a generally linear incremental improvement in air quality. The notice of proposed rulemaking provided an example calculation for an area with a 2013 attainment date, i.e. an area that achieves attainment level emissions in 2012. (See section III.G.4.b.iv of the proposal, 70 FR 66013.) In this example, the 2009 emissions year represents 7/10 of the period extending from the baseline year of 2002 to the 2012 year of attainment level emissions. Therefore, for this example, EPA's proposed requirement would be for this area to achieve emission reductions by 2009 representing approximately 7/10 of the emission reductions needed to attain the standards. For states with areas needing the attainment deadline extended to 2014 or 2015, EPA proposed to require achievement of generally linear emission reductions at two RFP milestone years—the 2009 and 2012 emission years.

The EPA received several comments on various elements of its proposed approach. Several commenters objected to EPA's proposed requirement to achieve linear progress toward attainment, asserting that EPA cannot reasonably expect states to achieve a significant amount of progress within a short time after plan submittals are due. Some commenters recommended requiring a specific emission reduction percentage, similar to the rate of progress requirement for ozone. These comments are addressed below.

b. Final Rule

The EPA is requiring States with areas needing an extension of the attainment deadline to submit RFP plans. These plans must demonstrate that generally linear reductions in emissions will occur by 2009, i.e. that emissions in 2009 will be reduced to the extent represented by a generally linear progression from 2002 base year emissions to attainment-level emissions. For any area that needs an extension of the attainment deadline to 2014 or 2015, the State's RFP plan would also need to demonstrate that generally linear reductions will be achieved in the 2012 emissions year as well.

c. Comments and Responses

Comment: Several commenters objected to EPA's proposed requirement that states demonstrate linear progress toward attainment. For example, a commenter stated that a ''generally linear reduction process may not be practicable.'' A commenter stated that it ''agrees that areas should be able to take credit for reductions from 2002 forward, [but] EPA should allow for fewer reductions (as opposed to linear reductions) prior to 2008.''

A commenter noted that EPA's ''proposed approach ignores several important realities about PM NAAQS implementation. First, * * * [n]ot until SIP submittal in April 2008, some 6 years after the RFP baseline date, will any local measures be finally adopted and approved. Under [the example EPA provided in its proposed rulemaking], states will be required to play 'catch-up' by achieving 70 percent of the required reductions in 2009. * * * Second, the 'generally linear' approach ignores that EPA intends for states to rely in large part on mobile source reductions and reductions in NO_X and SO_2 from CAIR implementation to achieve attainment in many areas. These measures fail a 'generally linear' test since most of the reductions they provide will not be realized until after 2009.'' This commenter continues that the incremental reductions in emissions required in the Clean Air Act need not be equal increments, that the absence of a specific statutorily mandated increment (such as the 3 percent per year requirement for ozone) allows EPA to be more flexible and to rely more heavily on later reductions. The commenter also argues that EPA's proposal is more stringent than the ozone RFP requirement, insofar as the ozone RFP requirement provides for averaging over 3 years. Similar comments were submitted by other commenters.

Another commenter supported EPA's proposal. This commenter supported requiring demonstrations that areas achieve emission reductions that will yield incremental improvement in air quality on a path toward expeditious attainment.

Response: The EPA believes that the requirement for generally linear reductions is reasonable because it allows States to take credit for early reductions achieved due to federal, State, and local programs. We find that it appropriately implements the RFP requirement in the Clean Air Act. For these reasons, EPA is finalizing the requirement that RFP plans for areas needing an attainment deadline extension show generally linear progress in reducing emissions from the base year through the 2009 emissions year. EPA is also requiring that areas needing an attainment deadline extension to 2014 or 2015 (i.e. attainment level emissions projected to start in 2013 or 2014) show generally linear progress in reducing emissions through the 2012 emissions year.

The commenters objecting to the requirement for generally linear progress appear to be assuming that only minimal emission reductions can be expected before 2008, so that a requirement for generally linear progress would require plans submitted in 2008 to compensate by achieving unrealistically high levels of emission reductions. The EPA disagrees with this assumption.

In fact, substantial emission reductions have occurred in the past few years and can be expected to occur through the 2009 emissions year. The EPA has promulgated significant mobile source rules recently that will yield

substantial benefits in the coming years, and these benefits follow a series of prior rules that provide a steady progression of emission reductions as newer, cleaner vehicles replace older, dirtier vehicles. For utilities, significant NO_X reductions occurred in 2004 under the NO_X SIP call, and substantial SO_2 reductions are expected to occur under the CAIR trading program prior to 2010 due to incentives for early reductions and the banking of allowances.

The EPA has also promulgated many other regulations that will reduce particulate matter and particulate matter precursor emissions before as well as after 2009. States have also been implementing a variety of measures. With use of a 2002 baseline, the assessment of RFP allows credit for these measures. The following is a partial list of the measures that have been adopted and will contribute to achieving generally linear reductions:

- NO_X SIP Call.
- Tightened emission limits for new gasoline and diesel vehicles.
- Numerous regulations requiring Maximum Achievable Control Technology, including regulations for:

—Iron and steel plants, including coke plants
—Industrial boilers
—Cement plants
—Lime plants
—Primary aluminum plants

- Numerous consent decrees for refineries.
- Numerous consent decrees for power plants.
- The Clean Air Interstate Rule for utilities.
- Retrofitted controls on diesel vehicles, and related programs for reducing diesel vehicle emissions.
- Closures of coke plants and other facilities (and, from a national perspective, replacement with cleaner new facilities).

While different control measures require various timelines for implementation, EPA believes that many of the additional measures that states might adopt for attainment planning purposes can be implemented in a timely fashion for addressing RFP requirements. Thus, EPA believes that states can reasonably be expected to assure that the combination of existing measures and additional measures as necessary will provide for generally linear progress in reducing emissions. Furthermore, particularly with respect to the 2009 RFP milestone year, when EPA evaluates whether the emission levels in a state plan represent generally linear progress, EPA will consider the availability of measures that can be implemented by 2009.

It is difficult to compare the stringency of this RFP requirement to the RFP requirement for ozone. The RFP requirement for ozone measures one form of progress that occurs after 3 years, and the requirement for $PM_{2.5}$ measures a different form of progress that occurs after 7 years (and for some areas also after 10 years). That is, the ozone RFP requirement applies a fixed, universally applicable emission reduction percentage for one pollutant (VOC), whereas EPA is defining the $PM_{2.5}$ RFP requirement as an area-specific combination of emission reductions for multiple pollutants, defined on the basis of each area's attainment demonstration.

The EPA believes that the Clean Air Act mandates not merely eventual attainment by 2015 but also that states demonstrate that emissions are being incrementally reduced in earlier years. (As discussed elsewhere, states must also demonstrate attainment by earlier than 2015 if feasible.) The requirement for RFP reflects Congressional intent that areas make steady progress toward attainment in the years before attainment occurs, and states have ample opportunity to assure that reductions occur well before 2015.

Comment: A commenter observes that the $PM_{2.5}$ nonattainment areas in its state also violate the ozone standard. The commenter observes, ''[i]n setting plan requirements, U.S. EPA should choose options that best facilitate harmonization of fine particulate and ozone control programs. This includes using a fixed percentage of emission reductions per year for reasonable further progress (RFP). We recommend the ozone RFP metric of three percent annual emission reductions averaged over three years.'' Another commenter also supports a more prescriptive RFP requirement, and comments that ''As suggested by EPA, nonattainment areas must be required to achieve 'a fixed percentage reduction of the emissions of direct $PM_{2.5}$ and regulated $PM_{2.5}$ precursors and in specific milestone years' between the base year and the attainment year proposed in the attainment demonstration.'' A third commenter supported establishing a requirement for a fixed emission reduction percentage, set at ''no less than the 3 percent rate'' in Section 182, with the possibility of higher rates in areas with more severe air quality problems.

Other commenters prefer the approach that EPA proposed. For example one commenter states that it agrees with EPA's approach of using the attainment demonstration to define the parameters for determining what constitutes RFP, and the commenter supports the flexibility of EPA's proposed approach ''rather than requiring fixed linear percentage reductions.'' Regarding the proposed option to require 3 percent per year emission reductions for areas classified as serious, some commenters recommended against establishing classifications and a fixed emission reduction percentage for any area.

Response: Requiring a fixed annual emission reduction percentage would impose a ''one-size-fits-all'' approach to address a range of circumstances. Requiring a fixed annual emission reduction percentage would overstate the reductions needed to achieve timely attainment in some areas and would understate the reductions needed to achieve timely attainment in other areas. The EPA believes that defining the RFP requirement in terms of achieving generally linear progress toward the emission reductions needed for timely attainment assures that each area will achieve a steady rate of progress most appropriate for the area to achieve timely attainment.

The EPA recognizes that many areas are nonattainment for both $PM_{2.5}$ and ozone and that the control programs for the two pollutants are sufficiently intertwined that harmonization of planning for meeting requirements applicable to the two pollutants is important. However, because the statutory requirements set forth in section 182 do not apply to $PM_{2.5}$ RFP plans, EPA believes it is neither necessary nor appropriate to impose these requirements for $PM_{2.5}$. Indeed, given the multiple pollutants that contribute to $PM_{2.5}$ and the variations that exist in the nature and composition of $PM_{2.5}$ across the country, EPA believes that the $PM_{2.5}$ RFP requirements for generally linear reductions are better defined to reflect these variations and thus better targeted toward the emission reductions that in each area can be expected to lead toward timely attainment. Further, EPA believes that application of a different form of the RFP requirement does not cause conflicts in implementation planning for the two standards. For example, reductions of NO_X emissions will generally reduce concentrations of both ozone and $PM_{2.5}$, and NO_X emission reductions are creditable for meeting both the ozone and the $PM_{2.5}$ RFP requirements.

An important distinction between $PM_{2.5}$ and ozone is that fine particle formation is in general a more complex process, affected by both direct emissions and numerous precursor pollutants. The EPA does not believe

that RFP targets for $PM_{2.5}$ should be the same as those used for the ozone implementation program, nor should the same percentage reduction be used for all $PM_{2.5}$ related pollutants. Instead, EPA believes that RFP plans should reflect an appropriate combination of pollutant reductions that most effectively provides for attainment. Therefore, EPA has defined an RFP requirement in which target emission reductions are established in conjunction with the area's attainment plan.

5. Geographic Coverage of Emissions Sources

a. Background

$PM_{2.5}$ concentrations reflect a combination of impacts over a wide range of geographic scales. For some components of $PM_{2.5}$, observed concentrations typically arise predominantly from sources within the nonattainment area. For other components, $PM_{2.5}$ concentrations may be influenced by sources across a broad area extending outside the nonattainment area. The EPA's intent is to define the RFP requirement in terms of emissions reductions that can be expected to provide generally linear improvements in air quality in the nonattainment area. For this purpose, EPA continues to believe that RFP requirements for $PM_{2.5}$ are best defined such that states evaluate emissions of each pollutant throughout the area in which the emissions substantially influence $PM_{2.5}$ concentrations in the nonattainment area.

As described in the proposed rulemaking, EPA expects each area's attainment demonstration to identify many of the parameters used to define the emission reductions that would represent RFP. First, the attainment plan will identify the pollutants that are being reduced to achieve attainment. Second, the attainment plan will identify the amount of reduction of each pollutant and the date by which attainment can be achieved. This information suffices to calculate a baseline set of reductions to be achieved by 2009 to provide for RFP. Third, where a state chooses to achieve RFP by reducing some pollutants earlier than others, the attainment plan will provide the information needed to assess whether the intended set of reductions can be expected to provide a comparable level of air quality improvement. Fourth, if the State intends to include emissions sources located outside the nonattainment area in its RFP plan, the information necessary to justify inclusion of such sources will likely be found in the attainment plan.

The EPA's proposed rulemaking identified several expectations regarding regional versus local impacts. For directly emitted $PM_{2.5}$ (including organic and other carbonaceous particles as well as miscellaneous inorganic particles and including condensable particulate matter), EPA recognized that impacts are commonly localized, and that direct emissions of $PM_{2.5}$ outside the nonattainment area should not be included in the RFP plan. Conversely, EPA recognized the regional nature of secondarily-formed sulfate and nitrate, and proposed that states could justify inclusion in the RFP plan of SO_2 and NO_X emissions sources located within 200 kilometers of the nonattainment area.

The EPA recognizes that fine particles travel over long distances, and that distant emissions of SO_2 and NO_X emissions can influence a nonattainment area's air quality. At the same time, distant sources can be expected to have less impact than sources closer to the nonattainment area. EPA's procedures for assessing RFP rely on a general assumption that all the sources included in the assessment have a comparable impact per ton of emissions. For this reason, it would be inappropriate to include distant emission sources in the assessment. Indeed, limiting the consideration of SO_2 and NO_X emissions to a 200 kilometer range is intended to assure that only sources with comparable impacts are included in the assessment.

b. Final Policy

The policy for addressing direct $PM_{2.5}$ emissions in RFP plans remains unchanged from the proposal: only emissions from within the nonattainment area may be included. Conversely, for SO_2 and NO_X, EPA believes that states could be able to justify considering not only all emissions in the nonattainment area but also emissions within a distance that may be up to 200 kilometers from the nonattainment area. States may also be able to justify consideration of VOC and ammonia emissions outside the nonattainment area on a case-by-case basis. As we explain more fully below in responding to comments, in situations where the state demonstrates that VOCs are a significant contributor to $PM_{2.5}$ concentrations in the area, it may be appropriate to include VOC emission sources within a distance of up to 100 kilometers of the nonattainment area. Given the uncertainties regarding ammonia emission inventories and the effects of reducing ammonia, EPA is not establishing a policy on this issue with respect to ammonia. States that expect to regulate ammonia should consult with their regional offices to determine appropriate approaches for those areas. The justification for considering emissions outside the nonattainment area shall include justification of the state's recommended definition of the area used in the RFP plan for each pollutant.

The EPA received comments objecting to the possibility that RFP inventories for areas outside the nonattainment area could include selected sources expecting substantial emission reductions while excluding other nearby sources expecting emission increases. Based on its review of these comments, EPA is revising its approach for considering regional emissions. If the state justifies consideration of precursor emissions for an area outside the nonattainment area, EPA will expect state RFP assessments to reflect emissions changes from all sources in this area. The State cannot include only selected sources providing emission reductions in the analysis. The inventories for 2002, 2009, 2012 (where applicable) and the attainment year would all reflect the same source domain (i.e. the same set of sources except for the addition of any known new sources or removal of known, creditably and permanently shut down sources).

In cases where the state justifies consideration of emissions of specified precursors from outside the nonattainment area, the state must provide separate information regarding on-road mobile source emissions within the nonattainment area for transportation conformity purposes. The EPA's transportation conformity regulations (40 CFR Part 93.102(b)) only require conformity determinations in nonattainment and maintenance areas, and these regulations rely on SIP on-road motor vehicle emission budgets that address the designated boundary of the nonattainment area. For this reason, if the state addresses emissions outside the nonattainment area for a pertinent precursor (i.e. a precursor for which mobile sources are significant, as discussed in the May 6, 2005 transportation conformity rule on $PM_{2.5}$ precursors at 72 FR 24280), the on-road mobile source component of the RFP inventory will not satisfy the requirements for establishing a SIP budget for transportation conformity purposes.

In such a case, the state must supplement the RFP inventory with an

inventory of onroad mobile source emissions to be used to establish a motor vehicle emissions budget for transportation conformity purposes. This inventory must address on-road motor vehicle emissions that occur within the designated nonattainment area, must be provided for the same milestone year or years as the RFP demonstration (i.e. 2009 and 2012 as applicable), and must satisfy other applicable requirements of the transportation conformity regulations. So long as the state provides this separate emissions budget EPA believes that this approach will optimally address both the RFP and the transportation conformity provisions of the Act.

The EPA is restricting the geographic area for RFP assessments to include only areas within the state or states represented in the nonattainment area. For a single state nonattainment area, only emissions within that state would be considered, even if other states may be within 200 kilometers of the nonattainment area. For multi-state nonattainment areas, only regions within states represented in the nonattainment area shall be included in the RFP assessment. This restriction is intended to address commenters' concerns about the enforceability of emission reductions included in the RFP assessment and helps assure accountability for these reductions. This topic is discussed further in the discussion below about multi-state nonattainment areas.

The EPA is retaining the approach that RFP assessments may not include direct $PM_{2.5}$ emissions from sources outside the nonattainment area. If a State regulates VOC or ammonia emissions as part of its attainment strategy, the RFP plan must include emissions of these pollutants. In the event that a State technical demonstration indicates that emissions of VOC or ammonia from sources outside the nonattainment area contribute significantly to $PM_{2.5}$ concentrations in the nonattainment area, EPA will consider on a case-by-case basis whether it would be appropriate to include emissions from such sources in the RFP plan.

c. Comments and Responses

The EPA received numerous comments on its proposal regarding how regional versus local impacts would be addressed. Multiple commenters objected to EPA's proposal that states could consider sources reducing emissions but ignore neighboring sources increasing emissions. Other commenters recommended that EPA support granting credit for reductions of direct $PM_{2.5}$ emissions that occur outside nonattainment areas. A few commenters also recommended different treatment of selected pollutants.

Comment: Several commenters object to the methods by which EPA proposed to account for reductions outside the nonattainment area. According to a set of commenters, if indeed sources outside the nonattainment area contribute to nonattainment, ''then EPA cannot lawfully or rationally allow the state to claim RFP credit from a single source's reductions without including in the baseline emissions from all sources (mobile, area and stationary) within the same distance from the nonattainment area, and without calculating the impacts of increases and decreases in such emissions on RFP. Viewing reductions from a single 'outside the area' source in isolation will invariably provide an incomplete and inaccurate picture of the actual increase or decrease in emissions contribution to the nonattainment area from all 'outside the area' sources. Moreover, EPA's proposal creates numerous opportunities to game and undermine the system. By allowing nonattainment areas to rely on RFP reductions made outside the nonattainment area, the proposed rule strays from the Act's focus on achieving emissions reductions from sources within the nonattainment area.'' Another commenter insisted that states should not be allowed to consider emissions from sources outside the area unless they can demonstrate the impacts of these sources on nonattainment area concentrations.

In addition, a commenter objects to consideration only of sources that are reducing emissions and recommends that EPA allow credit for upwind source reductions only ''on the condition that all other major sources in the 200 kilometer boundary are also not allowed to increase emissions.'' Another commenter supports an option which states would only consider emissions within the nonattainment area, observing that to consider emissions outside the nonattainment area would be difficult to administer and might inappropriately ''dilute the reductions needed in the nonattainment area.'' This commenter also observes that a 200 kilometer limit does not include much of the emissions that yield long range transport. Another commenter supports crediting reductions outside the nonattainment area but requests that EPA define the area to be considered.

Response: The EPA agrees that examining emissions reductions of only selected sources outside the nonattainment area gives an inaccurate assessment of the progress that an area is making. For example, if a state took credit for emission reductions at Source A but ignored equal emission increases at neighboring Source B, the state would claim emission reductions in its RFP plan when in fact no net emission reductions had occurred.

The commenters suggest various remedies for this problem. One suggestion is to include all sources within the area that is used. Another suggestion is to allow no consideration of emissions outside the nonattainment area. Yet another suggestion is to allow consideration of selected sources so long as other sources do not increase emissions.

The EPA is adopting the first of these suggestions: for the pertinent area outside the nonattainment area, the RFP assessment must include emissions (for all years evaluated) for all sources. The EPA believes that inclusion of all sources is needed to ensure that the RFP plan reflects the actual net emissions changes that are occurring in the relevant area.

In cases where the state justifies consideration of emissions of specified precursors from outside the nonattainment area, EPA is accepting the recommendation of various commenters that the inventories of these precursors used for RFP purposes shall include mobile source emissions as well as stationary and area source emissions. However, in cases where onroad mobile source emissions are significant and are therefore included, the state would need to submit additional information for transportation conformity purposes. As discussed above, in accordance with existing transportation conformity regulations (40 CFR Part 93), the SIP's motor vehicle emissions budget(s) must reflect an emissions inventory of on-road mobile source emissions for the nonattainment area. Consequently, in these cases, the state would need to supplement its RFP inventory with information identifying the inventory of on-road mobile source emissions within the nonattainment area for the pertinent precursor(s) for the applicable year or years (i.e. 2009 and potentially 2012) to be used to establish a motor vehicle emissions budget for transportation conformity purposes.

The relevant comments in general did not address the dimensions of spatial domain of the sources outside the nonattainment area that would be used in assessing RFP. EPA agrees with a commenter urging, as a prerequisite to including sources of the pertinent pollutants outside the nonattainment

area in the assessment, that states must justify the inclusion of sources outside the nonattainment area. This justification would need to demonstrate that these emissions have a substantial impact on nonattainment concentrations that warrants including these emissions along with nonattainment area emissions in assessing RFP. Another commenter recommends that EPA define the area to be included. Since the demonstrations of impact are best done by states, in conjunction with their attainment planning, EPA intends to allow States to justify the area to be included, within distance limits discussed above.

Comment: Numerous commenters recommend that EPA allow credit for reductions of direct $PM_{2.5}$ emissions outside the nonattainment area. Some of these commenters also recommend that EPA allow credit for mobile source emission reductions outside the nonattainment area. Other commenters support EPA's proposed approach, in which states may justify considering precursor emissions outside the nonattainment area but must evaluate direct $PM_{2.5}$ emissions based solely on emissions within the nonattainment area.

Response: Under Section 107 of the Clean Air Act, EPA is to designate nonattainment areas that include areas nearby to the violations that contribute to the violations. Given the spatial scale of the impacts of direct $PM_{2.5}$ emissions, EPA believes that any direct $PM_{2.5}$ emission source that demonstrably influences nonattainment area violations (and thus would contribute to these violations) would also be considered to be nearby to the violations for designation purposes. The EPA believes that it has properly defined the nonattainment areas to include all nearby contributing sources. Nevertheless, EPA asks anyone with evidence that an additional source or source area contributes to violations in a nonattainment area to submit that information to EPA and to recommend incorporation of that source or source area into the nonattainment area.

The EPA has commented on consideration of mobile source emissions above. For direct $PM_{2.5}$ emissions, EPA believes that the nonattainment area properly defines the area of consideration, and emissions from mobile sources outside the nonattainment area, like emissions from stationary sources outside the nonattainment area, should not be considered. For precursors for which consideration of emissions outside the nonattainment area is justified, the applicable inventories would include emissions from all sources including mobile sources as well as stationary sources.

Comment: A commenter states that ''RFP credits for VOC should be granted for reductions achieved within the nonattainment area as well as [within] geographical limits outside of the nonattainment area.'' This commenter supports consistency with the ozone policy, which allows credit for NO_X reductions within 200 kilometers and VOC reductions within 100 kilometers of the nonattainment area. Another commenter makes similar comments regarding VOC and comments that ''[a]s the science and understanding of $PM_{2.5}$ formation increases, EPA must revisit the 200 kilometer parameter and develop a possible proposal for ammonia.''

Response: Conceptually, EPA agrees that in areas where anthropogenic VOC emissions outside the nonattainment area are shown to be a significant contributor to nonattainment area $PM_{2.5}$ concentrations, presumably by formation of organic particles that influence nonattainment area concentrations, reduction of these VOC emissions could help improve air quality in the nonattainment area. Therefore, EPA is revising its policy to accommodate consideration of these potential impacts. The EPA believes that as the impacts of anthropogenic VOC on $PM_{2.5}$ concentrations are better understood, it may in some cases be appropriate to consider sources outside the nonattainment area in RFP plans if the impacts from such sources can be properly quantified and justified.

Nevertheless, EPA must highlight the technical challenges involved in assessing the impacts of VOC emission reductions. First, it is essential that the impacts of secondary organic particle formation from anthropogenic VOC emissions be differentiated from the impacts caused by biogenic VOC emissions and from the impacts of direct organic particle emissions. Second, the process of organic particle formation is highly complex, and currently available atmospheric models typically perform poorly in assessing the mass of particles thus formed. Third, the distance range of impacts, and to be more precise the distance range over which source impacts are comparable, is especially uncertain. While the distance range for organic particle formation is not necessarily the same as for the influence of VOC on ozone formation, it may be appropriate to include sources within 100 kilometers of the nonattainment area for both purposes, as the commenter recommended. However, any state wishing to include such sources outside the nonattainment area must justify the distance range that is appropriate for the area.

The EPA is not prepared at this time to establish generally applicable guidance with respect to how RFP plans should address ammonia in cases where that precursor is found to be significant. States that expect to regulate ammonia emissions should consult their regional office regarding appropriate approaches for their particular areas.

Finally, EPA agrees with the commenter that EPA should revisit the range of issues regarding geographic distances of impacts as more information and understanding become available.

6. Pollutants To Be Addressed in the RFP Plan

a. Background

A number of commenters appeared to be confused by the discussion in the notice of proposed rulemaking regarding the pollutants to be included in the RFP assessment. The EPA proposed that the attainment demonstration would provide the key parameters of the RFP demonstration, and that the list of pollutants to be addressed in the RFP demonstration would match the list of pollutants regulated as part of the attainment demonstration. However, the notice of proposed rulemaking also suggested that the presumptions regarding whether different pollutants are to be regulated under NSR and RACM (including RACT) would also apply to RFP. This led some commenters to recommend different treatment of specific pollutants.

In fact, the presumptions of applicability that EPA is promulgating for RACM are not germane to RFP. The pollutant coverage of RFP assessments is determined on an area-specific basis according to each area's attainment demonstration, and EPA need not establish presumptions as to what pollutants are included in the RFP assessment. For example, if a state includes no NO_X emission reductions in its attainment plan, then the RFP plan would not include NO_X, irrespective of whether the (uncontrolled) NO_X emissions contribute significantly to the areas $PM_{2.5}$ concentrations.

The contrast between establishment of presumptions for RACM and having no such presumptions for RFP (or for attainment demonstrations) reflects differences in regulatory context. For RACM, at issue is whether the impact of the pollutant is sufficient to warrant full implementation of the RACM requirements. In contrast, for RFP (as for attainment plans), EPA is establishing

an overall progress requirement that may be met by applying various control levels to various pollutants, so long as overall emission reductions are adequate. Indeed, if the state chooses not to control a particular pollutant in its attainment plan, then the presumption is that that pollutant would not be reduced in the RFP plan either. Furthermore, states have the flexibility to meet the overall progress with any adequate combination of control of relevant pollutants, regardless of the significance or insignificance of these pollutants' impacts. For these reasons, EPA is making no presumptions as to what pollutants will be included in RFP plans.

b. Final Policy

As proposed, the pollutants to be addressed in the RFP plan are those pollutants that are subject to control measures in the attainment plan.

c. Comments and Responses

Comment: A commenter states that ''VOC should be considered a presumptive $PM_{2.5}$ precursor.'' Another commenter recommends presuming that VOC and ammonia are included in the RFP plan.

Response: The EPA's approach to RFP does not rely on presumptions as to whether a pollutant does or does not warrant regulation as a precursor. Instead, pollutants are to be included or excluded according to whether the attainment demonstration includes emission controls for the pollutant that yield quantitative air quality benefits. Thus, irrespective of the presumptions applicable to RACM, the RFP plan would not include VOC unless the attainment plan reflects air quality improvements from VOC emission controls. The challenges of addressing VOC as part of an RFP plan were discussed earlier in this section. Similarly, ammonia would not be included in the RFP plan if the attainment plan does not regulate ammonia emissions.

7. Equivalent Air Quality Improvement

a. Background

The EPA proposed that states could use alternative combinations of various types of emission control programs to meet RFP requirements if the alternative would be expected provide air quality improvements that are approximately equivalent to those of the benchmark emission reductions. Some control programs for some pollutants can be implemented more quickly than other control programs. EPA believes that it is unnecessary to require that all pollutants be reduced at the same rate or by the same fraction of the ultimate attainment plan reductions. The EPA believes instead that the states should have flexibility to ''mix and match'' control strategies, so long as they provide a demonstration that the adopted approach can be expected to yield approximately the same air quality progress as an approach in which the state achieves an identical fraction of the attainment strategy for all pollutants by the RFP milestone date.

The notice of proposed rulemaking presented examples of the assessment of RFP, illustrating EPA's recommended approach for establishing a benchmark set of emission reductions and illustrating EPA's recommended procedures for whether modified approaches that control some pollutants earlier than other pollutants may be considered equivalent. While not repeated here, the examples remain appropriate for describing the approach included in the final rule. (See 70 FR 66012–66013).

Most commenters supported EPA's proposal to allow alternative combinations of control that can be shown by simple means to be equivalent. A set of commenters objected to this approach, given the uncertainties involved in the equivalency assessment. Nevertheless, for this aspect of RFP policy, EPA's final policy reflects the policy that it proposed.

b. Final Policy

The EPA is adopting an approach that establishes a benchmark level of controls but allows states the flexibility to adopt any combination of controls of the various pollutants that can be shown to provide equivalent benefits using procedures that EPA is recommending (or at the State's option, air quality modeling). The first step is to determine the ratio of the number of years from the baseline year to the RFP review year (e.g., the 7 years from 2002 to 2009) divided by the number of years from the baseline year to the year in which attainment level emissions are achieved (e.g. the 10 years from 2002 to 2012, for an area with a 2013 attainment deadline). The benchmark level of controls is then determined by multiplying this ratio times the level of control being achieved for each pollutant. For example, for an area with an attainment deadline extended to 2013, the benchmark level of controls would reflect 7/10 of the emission reductions of each pollutant that is controlled in the attainment plan.

The equivalency process involves consideration of the air quality benefits for the emission reductions in the alternative plan for each regulated pollutant. In effect, the air quality benefits for each pollutant are used as weighting factors, such that pollutants for which controls yield larger benefits are weighted more heavily in determining the adequacy of the resulting plan. For each pollutant, the first step is to find the ratio of the emission reductions achieved by the RFP milestone date (e.g. the emission reductions achieved between 2002 and 2009) divided by the emission reductions achieved by the attainment date. The second step is to multiply this ratio times the air quality improvement attributable to full implementation in the attainment year of the attainment strategy relevant to that pollutant. The third step is to add these pollutant-specific results to obtain a total estimated air quality benefit of the alternative plan.

The air quality benefits of the benchmark reductions are easier to determine. The first step, inherent to defining the benchmark reductions, is to determine the ratio of the number of years to the RFP review divided by the number of years to attainment level emissions (in the example above, 7/10). The second step is simply to multiply this ratio times the quantity of air quality improvement achieved by the attainment plan. (Conceptually, the calculations are the same as are done for the alternative plan, but the mathematics are simpler because one is applying the same assumed fraction of the attainment plan emission reductions (e.g. 7/10) for all pollutants, so that there is no need to subdivide by pollutant.) For each milestone date, any alternative that provides estimated air quality benefits by the RFP milestone date that at a minimum are generally equivalent to the estimated benefits of the benchmark level of emission reductions will be considered to satisfy RFP requirements.

c. Comments and Responses

Comment: A set of commenters argues that the equivalency process is too uncertain, and recommends instead that states be required to achieve at least a fixed percentage reduction for all pollutants. The commenters cite the uncertainties acknowledged by EPA, including potential nonlinearity (i.e. that a given percentage of an emission reduction may yield a different percentage of the related air quality benefit). The commenters contrast EPA's willingness to accommodate these uncertainties, for purposes of giving states flexibility for alternate RFP plan designs, with EPA's unwillingness to accommodate the uncertainties inherent

in regulating ammonia emissions. The commenters state that ''Rather than propose a standardized process for coherently determining 'equivalency,' EPA embraces the possibility that States will invent multiple and disparate methodologies.'' The commenters argue that the need for certainty in achieving emission reductions trumps the benefits of state flexibility, not the other way around. The commenters state that if ''EPA decides nonetheless to accept equivalency demonstrations, it should at least * * * require States to conduct dispersion modeling'' to confirm equivalency. The commenters further find unlawful the fact that EPA would allow ''rough equivalency'' rather than full equivalency to the benchmark approach. The commenters would prefer that EPA required a fixed percentage reduction of the emissions of direct $PM_{2.5}$ emissions and of each precursor.

Response: The EPA believes that its proposed approach satisfies the intent of the RFP requirement, which is to make ongoing, steady progress toward attainment rather than backloading control strategies. A requirement to obtain at least a given percentage of each of the pollutants that contribute to $PM_{2.5}$ concentrations would impose an inflexibility that EPA concludes is unnecessary where not required by the statute. The EPA proposed to require that areas achieve emission reductions that are generally linear, and a plan that provides for rough equivalency to the benchmark approach would indeed provide generally linear reductions. In response to commenters' requests for a standardized process for assessing equivalency, EPA believes the process outlined in the final rule is responsive to this request. It is not clear whether the fixed reduction percentage that certain commenters recommended would be an area-specific percentage (such as EPA uses to define the benchmark approach) or a universally applicable percentage (such as 3 percent per year). If the former, then EPA would repeat the response above regarding flexibility being consistent with the Act's requirements; if the latter, then responses in III.6.4 regarding a fixed reduction percentage apply. The EPA believes that the procedures it is establishing to assess equivalency are adequate for assessing RFP and that dispersion modeling need not be required for this purpose.

8. Other RFP Issues

a. Multi-State Nonattainment Areas

As stated in the proposed rulemaking, EPA seeks to ensure that nonattainment areas that include more than one State meet RFP requirements as a whole. Some commenters expressed concern about how one state's submittal should address emissions in other states, including how the state might address questions about the enforceability of another state's requirements.

The issues here resemble the issues for attainment demonstrations. In that context as well, EPA seeks plans that reflect active consultation by the affected states and provide a combination of reductions that are enforceable by the respective states that collectively provide for attainment. The active involvement of regional planning organizations helps assure a collective design of a plan with specific requirements to be adopted by specific states. Likewise for RFP, EPA would expect states with multi-state nonattainment areas to consult with other involved states, to formulate a list of the measures that they will adopt and the measures that the other state(s) will adopt, and then to adopt their list of measures under the assumption that the other state(s) will adopt their listed measures. That is, each state would be responsible for adopting and thereby providing for enforcement of its list of measures, and then that state and ultimately EPA (at such time as the plan is approved) would be responsible for assuring compliance with the SIP requirements.

In accordance with this view of RFP, as is the case for attainment plans, EPA expects states sharing a multi-state nonattainment area to submit a common assessment of whether RFP will occur. As a default, if the assessment only includes emissions within the nonattainment area, then each state would submit an assessment based on emissions from the full nonattainment area including portions of the area in other states. If the assessment includes precursor emissions from additional area outside the nonattainment area, then the states should have a common rationale for the area included, and all affected states would use the same inventory of the same multi-state area thus defined in assessing whether RFP will occur. The EPA would judge such submittals based on (1) whether the overall projected emission reductions will achieve RFP and (2) whether the submitting state has adopted the necessary enforceable measures to assure that the reductions projected within its boundaries will in fact occur.

As a point of clarification, even if a state justifies consideration of emissions outside the nonattainment area in its RFP assessment, EPA intends that these assessments not use emissions from outside the state or states represented in the nonattainment area. For single state nonattainment areas, only emissions within that state would be considered. This will help assure accountability for the emission reductions included in the plan.

b. Tribal Areas

The EPA received no comments on its proposed policy regarding RFP for tribal areas, and EPA is finalizing the proposed policy. Under its Tribal Authority Rule (40 CFR 49.4), EPA found that it was not appropriate to apply SIP schedule requirements to tribes. For similar reasons, EPA is not requiring tribes to submit RFP plans. Generally this exemption will have limited if any impact on the achievement of RFP by an area. Nevertheless, consistent with its general role in implementing programs for tribes where ''necessary and appropriate,'' EPA will work with the affected tribes and states to ensure that emissions on tribal lands are addressed appropriately. The EPA intends to ensure that areas that include both state and tribal lands will satisfy RFP on a collective basis, similar to the policy applicable to multi-state nonattainment areas.

9. Mid-Course Review

a. Background

The EPA proposed requiring mid-course reviews on a case-by-case basis. The proposal described a mid-course review as a combination of reviews aimed at assessing whether a nonattainment area is or is not making sufficient progress toward attainment of the $PM_{2.5}$ standards. The proposal described the mid-course review as involving ''three basic steps: (1) Demonstrate whether the appropriate emission limits and emission reduction programs that were approved as part of the original attainment demonstration and SIP submittal were adopted and implemented; (2) analyze available air quality, meteorology, emissions and modeling data and document relevant findings; and (3) document conclusions regarding whether progress toward attainment is being made using a weight of evidence determination.'' (Cf. 70 FR 66010)

The EPA views mid-course review requirements as part of a set of requirements for implementing the Clean Air Act requirements for reasonable further progress. For areas that demonstrate attainment by April 5, 2010, EPA believes that this attainment demonstration also demonstrates that reasonable further progress is being achieved. For areas that demonstrate

attainment after April 5, 2010, EPA is requiring states to submit an RFP plan, due on April 5, 2008, showing that emissions in 2009 and, in some cases, in 2012, will be sufficiently reduced to provide generally linear progress toward levels that are expected to yield attainment. At issue here is how then to conduct ongoing tracking of whether the planned progress toward attainment is in fact occurring. Subparts 2 (for ozone) and 4 (for PM_{10}) include explicit requirements for ongoing milestone tracking. Since Subpart 1 (applicable for $PM_{2.5}$) allows EPA flexibility in determining how ongoing progress is to be tracked, EPA may adopt other approaches for achieving the necessary assurances that ongoing progress toward attainment is occurring.

Milestone reviews can be confounded by changes in inventory methods (a concern expressed by a commenter particularly with respect to condensable emissions) and involve lengthy delays while inventories are compiled before planning can begin. Other approaches involving only air quality data reviews also do not provide for timely planning, insofar as such approaches involve waiting for three years of air quality data after implementation of controls before planning can begin. The EPA believes that a mid-course review provides the most productive approach, in lieu of establishing milestone tracking or other requirements, to assure that reasonable further progress in reducing emissions is being achieved. For this reason EPA proposed a requirement for mid-course reviews.

The EPA proposed a process for establishing and implementing mid-course review. After the state submits an attainment plan (due in April 2008), EPA would evaluate whether a mid-course review is warranted after considering various factors including factors identified in the proposal. The EPA did not propose to conduct further rulemaking on establishing this requirement, but EPA proposed that ''[w]here EPA finds that a MCR would be required, the approval of the [attainment] demonstration would be contingent on a commitment from the State to conduct the MCR.'' The mid-course review would then be due April 2010. The EPA's proposal also stated that ''EPA would determine [based on review of the mid-course review] whether additional emissions reductions are necessary,'' so that states would need to complete the mid-course review ''three or more years before the applicable attainment date to ensure that any additional controls that may be needed can be adopted [in timely fashion].'' Finally, EPA stated ''[i]f a mid-course review will be required for certain $PM_{2.5}$ nonattainment areas, separate $PM_{2.5}$ mid-course review guidance will be written to address the specific requirements of $PM_{2.5}$ nonattainment areas.''

The EPA received numerous comments objecting to EPA's proposed approach. Several commenters noted the inconsistency between requiring a mid-course review in April 2010 versus requiring a mid-course review due 3 or more years before an attainment date of 2012 or earlier. Multiple commenters objected to EPA requiring a mid-course review only 2 years after the initial attainment plan is due. A commenter requested ''nationally applicable guidance on when an MCR would be required and what it would need to include.'' No commenters supported EPA's timeline for mid-course reviews.

Based on the comments that EPA received, EPA has reevaluated the process for mid-course reviews. Upon reevaluation, EPA shares many of the concerns expressed by commenters about the proposal. The proposal indeed presents conflicting dates for submittal. The EPA agrees that a deadline just 2 years after the initial SIP submittal is too soon for states to conduct meaningful analyses of whether areas are making progress towards attainment. This problem would be exacerbated by the proposed process, in particular the fact that states would not know to begin work on a mid-course review until after they had submitted their initial SIP and after EPA had sufficiently reviewed the submittal to determine the need for a mid-course review. An early mid-course review also would defeat one of the purposes of the mid-course review, which is to take advantage of advances in the science and understanding of the nature of condensables and other components of $PM_{2.5}$, to adjust plans to be better targeted at solving problems. For these reasons, EPA is significantly revising its approach to mid-course reviews as recommended by the commenters. The EPA is establishing a rule which provides more certainty to the states as to applicability and content of mid-course review requirements, thereby avoiding the need for future EPA rulemakings on the subject. The EPA's rule clearly does not require states with early attainment dates to conduct a mid-course review and would clearly mandate a mid-course review only for areas with later attainment dates. The EPA's final rule clarifies the content of mid-course reviews and provides for states to make decisions on whether further controls are needed rather than having EPA make this determination. The mid-course review shall include an updated modeled attainment demonstration as well as a review of the implementation of measures in the April 2008 SIP and a review of recent air quality data. The EPA believes that all of these elements are necessary and should be sufficient for the state to identify whether additional measures are needed to achieve attainment by the attainment date in the approved plan. The EPA believes that states, not EPA, should make the initial determination as to whether additional measures are needed, and EPA has designed its mid-course review requirements to provide for the states to make this determination.

The EPA is promulgating a fixed date of April 2011 as a date for submittal of mid-course reviews for areas with attainment dates in 2014 or 2015. This fixed date will facilitate joint planning for multiple areas to apply common assumptions regarding regional transport. This date also gives states adequate notice for preparing these reviews and adequate time after the April 2008 submittal to incorporate new information and understanding of $PM_{2.5}$ nonattainment problems to adjust attainment strategies as appropriate.

The EPA is not requiring areas demonstrating attainment by 2013 or before to conduct a mid-course review. Such areas plan to have attainment level emissions by 2012, and EPA believes that an April 2011 mid-course review would not provide a timely reassessment of such areas' attainment plans. Instead, EPA is clarifying that mid-course reviews are only required for areas that demonstrate a need for an attainment date extension at least to April 2014.

b. Final Rule

For each area with an approved attainment date in 2014 or 2015, EPA is requiring the state to submit a mid-course review by April 2011. The mid-course review shall include an updated attainment demonstration as well as a review of the implementation status of measures included in the April 2008 submittal and a review of recent air quality data. The state shall determine whether additional measures are needed for timely attainment, just as the state is responsible for determining whether additional measures are needed in the April 2008 attainment demonstration, subject to formal EPA SIP review. The EPA is not requiring RFP milestone reviews, and EPA is requiring mid-course reviews for areas with sufficiently extended attainment dates in lieu of any other form of tracking reasonable progress.

c. Comments and Responses

Comment: A number of commenters objected to EPA's proposed timeframe that would have areas submit a mid-course review only 2 years after the initial SIP is due. They recommended, instead, that areas with attainment dates 2 years or more beyond the first 5-year period submit mid-course reviews 3 years after the SIPs are due (April 2011) and every 3 years thereafter, if necessary. Their reason for this suggestion is that the timing of mid-course review requirements needs to be clearer and should allow adequate time between plans and mid-course reviews if they are to serve as meaningful reviews.

Several commenters also noted an inconsistency in the timing of mid-course review requirements under EPA's proposal. The EPA proposed that mid-course review submittals would be due 5 years after the initial designation, which for all the original designations means 5 years after April 2005, i.e. April 2010. However, EPA also proposed that mid-course reviews would be due 3 years before the attainment date, which for areas with an April 2012 attainment date means April 2009. The commenters considered April 2009 for a mid-course review submittal to be too soon after the initial SIP submittal in April 2008, arguing that EPA would not have had time to review the 2008 SIP submittal, and the states would not have time to prepare a mid-course review by 2009. Some of these commenters expressed a view that EPA should not require mid-course reviews earlier than 3 years after the SIP submittal date.

Response: The EPA agrees with these comments. The EPA is remedying the inconsistency in submittal dates by establishing the single submittal due date of April 2011 that was recommended by the commenters. As requested by commenters, EPA is also clarifying the applicability of the mid-course review requirement. The requirement shall apply to areas with attainment dates of 2014 or 2015; mid-course reviews shall not be required for areas that are expected to attain the standards by 2013.

Comment: A commenter supports mid-course reviews as a means of assuring that areas with longer-term compliance dates are on track to attain the NAAQS as expeditiously as practicable.

Response: The EPA agrees that mid-course reviews can be a critical step in assuring expeditious attainment for areas with extended attainment dates. Indeed, EPA is relying on mid-course reviews rather than milestone reviews or other forms of RFP tracking to serve this purpose.

Comment: A commenter recommended eliminating mid-course review requirements for any area with less than seven years between SIP submittal and attainment. The commenter urged that EPA carefully reconsider its overall timelines for $PM_{2.5}$ while considering the feasibility and practical usefulness of the steps required of States and emission sources.

Response: The EPA agrees that the proposed timeline potentially required mid-course reviews in areas where such reviews would not be warranted, and the timeline did not provide the clarity as to the applicability of the requirement that states need to fulfill their planning responsibilities. In response, EPA is not requiring mid-course reviews for areas demonstrating attainment prior to 2014. For those areas that cannot demonstrate that attainment will occur prior to 2014, EPA has streamlined the mid-course review process so that the state bears responsibility for making the initial determination as to whether additional measures are needed to achieve timely attainment, rather than requiring additional steps of EPA rulemaking and initial findings by EPA as to the level of controls needed in the state's SIP. With the revised timetable, states can be assured of a meaningful mid-course review effort that focuses on the areas that particularly warrant such a review and for which time is available for a productive assessment of the need for additional measures.

Comment: One commenter stated that the proposal that allows the Agency to determine whether or not a State needs to submit a mid-course review with their attainment demonstration on a case-by-case basis lacks sufficient information. Since these attainment demonstrations must meet rigorous criteria, and require substantial work by the States, the commenter is concerned that the proposal neglects to outline the criteria EPA will use to make the case-by-case mid-course review determinations. The commenter asks that EPA provide the States with nationally applicable guidance on when an MCR would be required and what it would need to include.

Response: The EPA agrees with this comment. In particular, EPA agrees that establishing clear criteria for applicability and content of a mid-course review requirement will provide states the opportunity to plan for these reviews and conduct appropriate reviews in a timely fashion. Therefore, this final rule is establishing specific criteria for the applicability of the mid-course review requirement, namely that a mid-course review shall be conducted for any area that cannot demonstrate attainment before 2014. This final rule is also identifying the necessary elements of this mid-course review, i.e. a review of the implementation of measures in the 2008 SIP, and review of recent air quality data, and an updated modeled attainment demonstration.

H. Contingency Measures

a. Background

Under subpart 1 of the CAA, all $PM_{2.5}$ nonattainment areas must include in their SIPs contingency measures consistent with section 172(c)(9). Contingency measures are additional control measures to be implemented in the event that an area fails to meet RFP or fails to attain the standards by its attainment date. These contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly upon failure to meet RFP or failure of the area to meet the standard by its attainment date. The preamble to the proposal stated that the SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measures will be implemented without significant further action by the State or by EPA. The contingency measures should consist of other control measures for the area that are not included in the control strategy for the SIP.

The April 16, 1992 General Preamble provided the following guidance: ''States must show that their contingency measures can be implemented without further action on their part and with no additional rulemaking actions such as public hearings or legislative review. In general, EPA will expect all actions needed to affect full implementation of the measures to occur within 60 days after EPA notifies the State of its failure.'' (57 FR at 13512.) This could include Federal measures and local measures already scheduled for implementation, as explained below.

The EPA has approved numerous SIPs under this interpretation—i.e., that use as contingency measures one or more Federal or local measures that are in place and provide reductions that are in excess of the reductions required by the attainment demonstration or RFP plan. (62 FR 15844, April 3, 1997; 62 FR 66279, December 18, 1997; 66 FR 30811, June 8, 2001; 66 FR 586 and 66 FR 634, January 3, 2001.) The key is that the statute requires that contingency measures provide for additional emission reductions that are not relied

on for RFP or attainment and that are not included in the demonstration. The purpose is to provide a cushion while the plan is being revised to meet the missed milestone. In other words, contingency measures are intended to achieve reductions over and beyond those relied on in the attainment and RFP demonstrations. Nothing in the statute precludes a State from implementing such measures before they are triggered. In fact, a recent court ruling upheld contingency measures that were previously required and implemented where they were in excess of the attainment demonstration and RFP SIP. *See LEAN* v. *EPA*, 382 F.3d 575, 5th Circuit., 2004.

One basis EPA recommends for determining the level of reductions associated with contingency measures is the amount of actual $PM_{2.5}$ emissions reductions required by the control strategy for the SIP to attain the standards. The contingency measures are to be implemented in the event that the area does not meet RFP, or attain the standards by the attainment date, and should represent a portion of the actual emissions reductions necessary to bring about attainment in area. Therefore, the emissions reductions anticipated by the contingency measures should be equal to approximately 1 year's worth of emissions reductions necessary to achieve RFP for the area.

As stated previously, EPA believes that contingency measures should consist of other available control measures beyond those required to attain the standards, and may go beyond those measures considered to be RACM for the area. It is important, however, that States make decisions concerning contingency measures in conjunction with their determination of RACM for the area, and that all available measures needed in order to demonstrate attainment of the standards must be considered first; all remaining measures should then be considered as candidates for contingency measures. It is important not to allow contingency measures to counteract the development of an adequate control strategy demonstration.

The preamble to the proposal stated that contingency measures must be implemented without ''significant further action'' after EPA determines that the area has either failed to meet RFP, or has failed to attain the standard by its attainment date. The purpose of the contingency measure provision is to ensure that corrective measures are put in place automatically at the time that EPA makes its determination that an area has either failed to meet RFP or failed to meet the standard by its attainment date. The EPA is required to determine within 90 days after receiving a State's RFP demonstration, and within 6 months after the attainment date for an area, whether these requirements have been met. The consequences for states which fail to attain or to meet RFP are described in section 179 of the CAA.

2. Final Rule

The final rule includes regulatory text for contingency measures and maintains the overall policy approach as described in the preamble to the proposal. The key requirements associated with contingency measures are:

—Contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly upon failure to meet RFP or failure of the area to meet the standard by its attainment date.

—The SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measures will be implemented without further action by the State or by EPA.

—The contingency measures should consist of other control measures for the area that are not included in the control strategy for the SIP.

—The measures should provide for emission reductions equivalent to about 1 year of reductions needed for RFP, based on the overall level of reductions needed to demonstrate attainment divided by the number of years from the 2002 base year to the attainment year. Contingency measures are those measures that would not be included in the attainment strategy for various reasons; for example, they may not be as economically feasible as other measures that are considered to be RACM, or it may not be possible to implement the measures soon enough to advance the attainment date (e.g. federal mobile source measures based on the incremental turnover of the motor vehicle fleet each year).

3. Comments and Responses

Comment: Several comments were received concerning the requirement for contingency measures under section 172(c)(9). The proposal indicated that contingency measures adopted as part of the State plan are to be equal to approximately 1 year's worth of emissions reductions necessary to achieve RFP, as determined by the attainment demonstration for the area. One commenter indicates that this amount of reductions for contingency measures may be excessive in some cases. The commenter stated that States should be allowed to demonstrate appropriate amount of reductions for contingency measures in each area based on the degree of the $PM_{2.5}$ nonattainment area problem and the progression of emission reductions planned for the area as a part of the SIP.

Response: The EPA agrees that the CAA does not include the specific level of emission reductions that must be adopted to meet the contingency measures requirement under section 172(c)(9). One possible interpretation of the CAA would assume that contingency measures should be in place in the event that all of the State's measures fail to produce their expected emission reductions. Under this scenario, the State theoretically would be required to adopt sufficient contingency measures to make up for the entire short fall. In other words, the State would have to adopt ''double'' the measures required to satisfy the applicable emissions reduction requirements.

The EPA believes that this scenario would be highly unlikely and that this interpretation would be an unreasonable requirement. The adoption of double the measures needed for attainment would be difficult for States. Therefore, the EPA believes that it is reasonable that contingency measures should, at a minimum, ensure that an appropriate level of emissions reduction progress continues to be made if attainment or RFP is not achieved, or if an area fails to attain the standard by its statutory attainment date and additional planning is needed by the State. The EPA believes that the contingency measures adopted by the State for the affected area should represent a portion of the actual emissions reductions necessary to bring about attainment in the area. Therefore, EPA believes that it is reasonable to require states to adopt contingency measures equal to approximately 1 year's worth of emissions reductions necessary to achieve RFP for the area.

Comment: One commenter claimed that EPA incorrectly quoted the CAA as requiring SIPs to provide for implementation of contingency measures upon an attainment or RFP failure, without ''significant'' further action by the State or EPA. The commenter stated that section 172(c)(9) does not contain the word ''significant.'' The CAA requires that contingency measures take effect ''without further action'' by the State or EPA.

Response: The EPA agrees with the commenter that the general requirements for attainment plans specified under section 172(c)(9) State that each plan must contain additional measures that will take effect without

'further action' by the State or EPA if an area either fails to make RFP or fails to attain the standard by the applicable attainment date. Section 51.1012 of the final rule describes the contingency measures requirement and does not include the word ''significant.'' However, as a matter of practicality states need to take minimal steps to make contingency measures effective and alert the affected public that the measures are in force. Thus, EPA has indicated based on conclusions first made in the 1992 General Preamble that states should complete all of these administrative steps within 60 days and that all regulatory steps be completed before SIP submission.

Comment: The commenter further states that EPA is wrong in asserting that contingency measures can include Federal measures and local measures already scheduled for implementation, or previously implemented measures that provide 'excess' reductions. The CAA requires contingency measures to consist of controls 'to be undertaken if' the area fails to meet attainment or RFP. The commenter states that this language clearly states that such measures are to be new measures that will be undertaken upon the triggering event specifically to address RFP or failure to attain, not measures already in place, or measures required for other reasons.

Further, the commenter claims that EPA can not rationally refer to any reductions prior to an attainment or RFP failure as 'excess' when total reductions in the area in fact prove insufficient to meet attainment RFP. The commenter states that EPA cites a 5th Circuit case as support, but the commenter respectfully submits that the case was incorrectly decided on this issue for the aforementioned reasons.

Response: In response to comments claiming that EPA is wrong in asserting that contingency measures can include Federal measures and local measures already scheduled for implementation, or previously implemented measures that provide 'excess' reductions, as stated previously, the EPA has approved numerous SIPs under this interpretation. The statute requires that contingency measures provide for additional emission reductions that are not relied on for RFP or attainment and that are included in the attainment demonstration for the area. These measures are intended to provide a ''cushion'' in terms of emissions reductions for the area while the State is revising the SIP for the area due to the failure to show RFP or attain. In other words, contingency measures are intended to achieve reductions over and beyond those relied on in the attainment and RFP demonstrations. Nothing in the statute precludes a State from implementing such measures before they are triggered.

As noted above, EPA's General Preamble interpreted the control measure requirements of sections 172(c)(9) and 182(c)(9) to allow nonattainment areas to implement their contingency measures early. 57 FR 13498, 13511 (April 16, 1992). The EPA has applied this interpretation in rulemakings. See, for example, 67 FR 6,590, 6,591–92 (September 26, 2002). See also rulemakings cited in the Background section, above. As set forth above, the Fifth Circuit has upheld EPA's interpretation. *Louisiana Environmental Action Network* v. *EPA,* 382 F.3d 575 (Fifth Cir. 2004). (''*LEAN*'') Commenters have not provided a basis for concluding that the Fifth Circuit in the *LEAN* case wrongly interpreted the CAA.

Commenters contend that the language in the CAA regarding contingency measure controls ''to be undertaken'' requires measures not already in place or required for other reasons. The Fifth Circuit disagreed, finding that the terms in section 172(c)(9)—''to be undertaken'' and ''to take effect''—were ambiguous, and finding persuasive EPA's interpretation that this language allows measures already in place or otherwise required. The Court held:

> ''Here, the EPA's allowance of early reductions to be used as contingency measures comports with a primary purpose of the CAA—the aim of ensuring that nonattainment areas reach NAAQS compliance in an efficient manner—and necessary requirements of the CAA.'' 382 F.3d at 583.

The Court further found that ''By utilizing contingency measures early, the contingency measures ensured that 'an appropriate level of emissions reduction progress' would be implemented while the State 'adopt[ed] newly required measures resulting from the bump-up to a higher classification.'' [citing the General Preamble]. *Id.*

In addition, the Court agreed with EPA that ''early reductions are necessary in order to create an incentive for nonattainment areas to implement 'all reasonably available control measures as expeditiously as practicable' '' in accordance with section 172(c)(1) of the CAA. Thus the Court concluded that it would be ''illogical to penalize nonattainment areas that are taking extra steps, such as implementing contingency measures prior to a deadline, to comport with the CAA's mandate that such states achieve NAAQS compliance as 'expeditiously as practicable.' '' *Id.* at 583–584.

The Fifth Circuit also endorsed the concept of ''excess'' reductions, noting that the reductions credits at issue in that case, ''although already implemented, are in effect set aside, 'to be applied in the event that attainment is [not] achieved' and such reduction credits 'are not available for any other use.' [citations omitted]. The setting aside of a continuing, surplus emissions reduction fits neatly within the CAA's requirement that a necessary element of a contingency measure is that it must 'take effect without further action by the State or [EPA]'.'' The Court concluded that ''the early activation of continuing contingency measures is consistent with the purpose and requirements of the CAA statute.'' Id. at 584.

Thus, EPA's approval of early implemented contingency measures is consistent with the CAA, as well as with EPA guidance. For example, EPA has consistently taken the position that ozone nonattainment areas classified moderate and above must include sufficient contingency measures so that ''upon implementation of such measures, additional emissions reductions of up to 3 percent of the emissions in the adjusted base year inventory (or such lesser percentage that will cure the identified failure) would be achieved in the year following the year in which the failure has been identified.'' 57 FR at 13511 (EPA's General Preamble). Thus the contingency measures are supposed to ensure that progress towards attainment will occur while the relevant State adopts whatever additional controls may be necessary to correct a shortfall in emissions reductions. *Id.* The EPA has historically allowed early reductions—that is, reductions achieved before the contingency measure is ''triggered''—to be used as contingency measures. See also August 13, 1993 Memorandum from G.T. Helms: Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas).

The commenter's argument that emission reductions cannot be valid contingency measures if they are otherwise required is also misplaced. A State must have the legal authority to require whatever reductions it may require as a contingency measure. As EPA has previously stated, ''all contingency measures must be fully adopted rules or measures.'' 62 FR 15844, 15846 (April 3, 1997). The fact that the State or Federal government has already exercised that authority is irrelevant because, as noted above, contingency measures must ''take effect

without further action by the State or [EPA].'' Section 172(c)(9). Thus, by definition, the State necessarily will have already exercised its legal authority to require reductions as a contingency measure before the measure is triggered. It does not matter whether or not a specific contingency measure is already required by law, as long as the emissions reductions that will result from that contingency measure have not been accounted for in the attainment and reasonable further progress demonstrations. If the reductions from the contingency measure are not available for any other use, then they are surplus that is set aside in the event reasonable further progress or attainment is not achieved.

A key element of a valid contingency measure reduction is that the State may not use the reduction in its attainment or reasonable further progress demonstrations if it is already using the reduction as a contingency measure. Those demonstrations must account for the actual emissions reductions that will make reasonable further progress towards, and achieve attainment of the NAAQS in the absence of contingency measures.

I. Transportation Conformity

Transportation conformity is required under CAA section 176(c) (42 U.S.C. 7506(c)) to ensure that Federally supported highway and transit project activities are consistent with (''conform to'') the purpose of the SIP. Conformity currently applies to areas that are designated nonattainment, and those redesignated to attainment after 1990 (''maintenance areas'' with plans developed under CAA section 175A) for the following transportation-related criteria pollutants: ozone, particulate matter ($PM_{2.5}$ and PM_{10}), carbon monoxide (CO), and nitrogen dioxide (NO_2). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS (or ''standards'').

The final $PM_{2.5}$ implementation rule does not contain any revisions to the transportation conformity regulation. The EPA addressed the transportation conformity requirements that apply in $PM_{2.5}$ nonattainment and maintenance areas in three separate rulemakings as described below.

First, on July 1, 2004, EPA published a final rule (69 FR 40004) that addressed the majority of requirements that apply in $PM_{2.5}$ areas including:

- Regional conformity tests to be used in conformity determinations both before and after SIPs are submitted and motor vehicle emissions budgets are found adequate or are approved;
- Consideration of direct $PM_{2.5}$ emissions in regional emissions analyses;
- Consideration of re-entrained road dust in $PM_{2.5}$ regional emissions analyses;
- Consideration of transportation construction-related fugitive dust in $PM_{2.5}$ regional emissions analyses; and
- Compliance with $PM_{2.5}$ SIP control measures.

Then on May 6, 2005, EPA promulgated a final rule (70 FR 24280) that specified the transportation-related $PM_{2.5}$ precursors and when they apply in transportation conformity determinations in $PM_{2.5}$ nonattainment and maintenance areas.

Finally, on March 10, 2006, EPA promulgated a final rule (71 FR 12468) that establishes the criteria for determining which transportation projects must be analyzed for local particle emissions impacts in $PM_{2.5}$ and PM_{10} nonattainment and maintenance areas. If required, an analysis of local particle emissions impacts is done as part of a transportation project's conformity determination.

Transportation conformity for the $PM_{2.5}$ standards began applying in $PM_{2.5}$ nonattainment areas on April 5, 2006, one year after the effective date of EPA's $PM_{2.5}$ nonattainment designations (i.e., April 5, 2005). CAA section 176(c)(6) and 40 CFR 93.102(d) provide a one-year grace period before conformity applies in areas newly designated nonattainment for a new standard. $PM_{2.5}$ SIP submissions such as RFP and attainment demonstrations would identify motor vehicle emissions budgets (''budgets'') for direct $PM_{2.5}$ or $PM_{2.5}$ precursors, as described below. These budgets would be used for satisfying transportation conformity requirements, once the budgets are found adequate or the SIP containing the budgets is approved by EPA. For example, state and local agencies would consider during the development of the $PM_{2.5}$ SIP whether reductions of on-road mobile source $S0_2$ emissions are a significant contributor to an area's $PM_{2.5}$ air quality problem, and if so, establish a $S0_2$ motor vehicle emissions budget for transportation conformity purposes.

The EPA has previously addressed its intentions regarding when budgets must be established in $PM_{2.5}$ SIPs for transportation conformity purposes. RFP plans, attainment demonstrations, and maintenance plans must include a budget for direct $PM_{2.5}$ emissions, except for certain cases as described below. All $PM_{2.5}$ SIP budgets would include directly emitted $PM_{2.5}$ motor vehicle emissions from tailpipe, brake wear, and tire wear. States should also consider whether re-entrained road dust or highway and transit construction dust are significant contributors and should be included in the $PM_{2.5}$ budget. For further information, see 40 CFR 93.102(b) and 93.122(f) of the transportation conformity regulation, as well as Sections VIII–X of the July 1, 2004 conformity rule preamble at 69 FR 40031–40036.

Under certain circumstances, directly emitted $PM_{2.5}$ from on-road mobile sources may be found an insignificant contributor to the air quality problem and NAAQS. Section 93.109(k) of the conformity rule states that ''[s]uch a finding would be based on a number of factors, including the percentage of motor vehicle emissions in the context of the total SIP inventory, the current state of air quality as determined by monitoring data for that NAAQS, the absence of SIP motor vehicle control measures, and historical trends and future projections of the growth of motor vehicle emissions.'' The EPA discussed its intentions for applying the insignificance provision in the July 2004 final rule (69 FR 40061–40063).

In the May 6, 2005 final rule, EPA provided details regarding when states must establish SIP budgets for any $PM_{2.5}$ precursor (i.e., NO_x, VOCs, $S0_2$ and ammonia). If through the SIP process a state concludes that on-road mobile source emissions of one or more precursors are significant (i.e. need to be addressed in order to attain the $PM_{2.5}$ standards as expeditiously as practicable), then EPA expects that the state will include a budget in the SIP for each of the relevant precursors. (70 FR 24287) The EPA also noted in the May 2005 conformity rule that, if inventory and modeling analyses demonstrating RFP, attainment or maintenance indicate a level of emissions of a precursor that must be maintained to demonstrate compliance with the applicable requirement, then that level of emissions should be clearly identified in the SIP as a budget for transportation conformity purposes, even if the SIP does not establish particular controls for the given precursor. If the state fails to identify such a level of emissions as a budget, EPA will find the submitted SIP budgets inadequate because the SIP fails to clearly identify the motor vehicle emissions budget as required by the conformity rule (40 CFR 93.118(e)(4)(iii)). (70 FR 24287) In determining whether the on-road mobile source emissions of a $PM_{2.5}$ precursor are significant, state and local agencies would use the criteria for insignificance findings provided in 40 CFR 93.109(k)

of the transportation conformity regulation. A further discussion of the criteria to be considered in establishing $PM_{2.5}$ precursor budgets is contained in the May 2005 final transportation conformity rule (70 FR 24282–24288). If state and local agencies conclude that on-road sources of a precursor are not a significant contributor to the area's $PM_{2.5}$ air quality problem, as described above, motor vehicle emissions budgets would not be established even though emissions may be addressed in the area's RFP plan, attainment demonstration and/or maintenance plan.

J. General Conformity

a. Background

The General Conformity regulations promulgated in 1993 establish an implementation process where Federal agencies are responsible for making their own determination of conformity with State implementation plans (SIPs), and EPA plays an advisory role. Recognizing that it was impracticable to evaluate all Federal actions for conformity, EPA created a number of exemptions in those regulations for actions with insignificant or not reasonably foreseeable emission increases, including exemptions for Federal actions with emissions below specified *de minimis* levels. When a Federal agency must demonstrate conformity for an action, the regulations provide several methods for making that demonstration. With the designations of $PM_{2.5}$ nonattainment areas on April 5, 2005, requirements for demonstrating conformity become effective in those areas on April 5, 2006.

On July 17, 2006 EPA issued a final rule (71 FR 40420) to amend the General Conformity Regulations to establish *de minimis* levels for $PM_{2.5}$ for the General Conformity program. The final rule established 100 tons/year of direct $PM_{2.5}$ emissions and its precursors as the *de minimis* level where the General Conformity regulations would apply in $PM_{2.5}$ nonattainment areas. In the process of finalizing the *de minimis* level for $PM_{2.5}$ three comments were received. One commenter was concerned about emissions from burning by Federal agencies. Another commenter proposed that the *de minimis* level for emissions of direct $PM_{2.5}$ should be set significantly lower than 100 tons—in the range of 25–50 tons per year (TPY) in areas that are likely to attain the $PM_{2.5}$ national ambient air quality standard within 5 years, and a level of 10–25 TPY in areas that are likely to take more than 5 years to achieve the national ambient air quality standard. A third commenter supported the proposed *de minimis* level.

The final rule revises the tables in sub-paragraphs (b)(1) and (b)(2) of the General Conformity Regulations by adding a *de minimis* emission level for $PM_{2.5}$ and its precursors. This action maintained our past policy of consistency between the conformity *de minimis* emission levels and the size of a major stationary source under the New Source Review program (70 FR 65984). These levels are also consistent with the levels promulgated for Reasonably Available Control Technology applicability levels for volatile organic compound and nitrogen oxide emissions in subpart 1 areas under the 8-hour ozone implementation strategy (68 FR 32843). Since EPA is not finalizing any classifications for the $PM_{2.5}$ nonattainment areas, we did not establish differing $PM_{2.5}$ *de minimis* emission levels for higher classified nonattainment areas.

b. Comments and Responses

Comment: One commenter requests that EPA communicate to all Federal agencies the value of the agencies advising the States as soon as possible of any planned future projects in nonattainment areas that may be above the General Conformity *de minimis* values or that will have to be evaluated to show that they are below *de minimis*. This is for projects that are very likely to proceed. The aim is to consider these future emissions in any growth projections during SIP development since such growth may not be anticipated well by the available growth model (E–GAS). States can communicate with existing Federal facilities now concerning this issue.

Response: The EPA sees the value in Federal agencies working with States to anticipate growth in emissions and include those anticipated emissions in the applicable SIP. The EPA is in the process of proposing regulatory amendments to the General Conformity regulations that provide a framework for Federal facilities to work with States to account for facility-wide emissions in SIPs and to include Federal facility emissions in future SIPs. The EPA anticipates that these rule amendments should be proposed before the end of summer 2006.

Comment: Some commenters stated that the *de minimis* level for $PM_{2.5}$ for conformity applicability should be less than 100 tons per year. A level of 50 tons per year was suggested for direct $PM_{2.5}$ emissions.

Response: Similar comments were received when the $PM_{2.5}$ *de minimis* level was proposed on April 5, 2006. The response to those comments can be found in the preamble to the final rule setting the *de minimis* level for $PM_{2.5}$ at 71 FR 40420.

Comment: Are the precursors for general conformity consistent with this rulemaking or with the transportation conformity rulemaking?

Response: The precursors for general conformity are generally consistent both with this rule and the transportation conformity rule. The only difference between the transportation rule and this rule is that SO_2 is not considered a precursor for transportation conformity determinations that occur prior to a $PM_{2.5}$ SIP unless EPA or the State air agency finds on-road mobile source emissions significant. For more information, see the May 6, 2005 transportation conformity rule on $PM_{2.5}$ precursors at 70 FR 24283. Since general conformity includes analysis of stationary sources the general conformity rule requires SO_2 as a precursor both before and after a $PM_{2.5}$ SIP is submitted.

Comment: When will rulemaking containing the *de minimis* levels for $PM_{2.5}$ and for the precursors be issued? There is some confusion, since the proposed rule says that states should assume 100 tpy for all $PM_{2.5}$ pollutants, as this would make it consistent with the levels for NO_X and VOC for the subpart 1 areas under 8-hour ozone. However, since New Jersey's classification is moderate under the 8-hour ozone standard and we are in an Ozone Transport Region, the *de minimis* level for VOC is 50 tons per year.

Response: On July 17, 2006 EPA issued a final rule (71 FR 40420) to amend the General Conformity Regulations to establish *de minimis* levels for $PM_{2.5}$ for the General Conformity program. The final rule established 100 tons/year of direct $PM_{2.5}$ emissions and its precursors as the *de minimis* level where the General Conformity regulations would apply in $PM_{2.5}$ nonattainment areas. Since EPA is not finalizing any classifications for the $PM_{2.5}$ nonattainment areas, we did not establish differing $PM_{2.5}$ *de minimis* emission levels for based on a classification scheme.

Comment: If a Statement of Conformity has been issued on a project and if the project has not been completed to date, are they required to address $PM_{2.5}$ prior to completion of the project or will they be grandfathered in?

Response: If a Federal action has completed a conformity determination and the action has started (regardless of whether the project is complete or not) then no new determination is needed. If

the conformity determination was completed, but the action did not start in 5 years a new determination is needed under the general conformity rules.

Comment: What guidance should states use to establish budgets for large facilities or military bases?

Response: The EPA has not issued any guidance for States and Federal facilities to establish facility-wide budgets in the applicable SIP. There is nothing in the General Conformity regulations preventing this approach which would allow Federal actions that do not increase total facility emissions over the budget in the SIP from determining the action conforms on the basis of its compliance with the budget limit. The EPA sees this practice as a positive step to encourage States and Federal agencies to work together to account for emissions in a SIP so they conform with the purposes and goals of the SIP. The EPA intends to address the approach and provide guidance in planned revisions to the General Conformity regulations which are expected to be proposed in 2006.

K. Emission Inventory Requirements

a. Background

Emission inventories are critical for the efforts of State, local, tribal and federal agencies to attain and maintain the NAAQS that EPA has established for criteria pollutants including $PM_{2.5}$. Pursuant to its authority under section 110 of Title I of the CAA, EPA has long required States to submit emission inventories containing information regarding the emissions of criteria pollutants and their precursors. The EPA codified these requirements in 40 CFR part 51, subpart Q in 1979 and amended them in 1987.

The 1990 CAAA revised many of the provisions of the CAA related to attainment of the NAAQS and the protection of visibility in mandatory Class I Federal areas (certain national parks and wilderness areas). These revisions established new emission inventory requirements applicable to certain areas that were designated nonattainment for certain pollutants. In the case of particulate matter, the emission inventory provisions are in the general provisions under Section 172(c)(3).

In June 2002, EPA promulgated the Consolidated Emissions Reporting Rule (CERR) (67 FR 39602; June 10, 2002), 40 CFR part 51 subpart A. The CERR consolidated the various emissions reporting requirements that already existed into one place in the CFR, established new reporting requirements for $PM_{2.5}$ and ammonia, and established new requirements for the statewide reporting of area source and mobile source emissions.

The CERR established two types of required emission inventories: annual inventories, and 3-year cycle inventories. The annual inventory requirement is limited to reporting statewide emissions data from the larger point sources. For the 3-year cycle inventory, States need to report data from all of their point sources plus all of the area and mobile sources on a statewide basis. A special case existed for the first 3-year cycle inventory for the year 2002 which was due on June 1, 2004.

The EPA issued guidance suggesting that 2002 be used as the Base Year for 8-hour ozone, $PM_{2.5}$ and regional haze planning efforts (November 18, 2002 EPA memorandum ''2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, $PM_{2.5}$ and Regional Haze Programs'' *http://www.epa.gov/ttn/chief/eidocs/2002baseinven_102502new.pdf*).

States should estimate mobile source emissions by using the latest emissions models and planning assumptions available at the time the SIP is developed. Information and guidance on the latest emissions models is available at *http://www.epa.gov/otaq/stateresources/transconf/policy.htm#models* and at *http://www.epa.gov/otaq/models.htm.*

By merging the information on point sources, area sources and mobile sources into a comprehensive emission inventory, State, local and tribal agencies may do the following:

- Set a baseline for SIP development.
- Measure their progress in reducing emissions.
- Have a tool to support future trading programs.
- Answer the public's request for information.

The EPA uses the data submitted by the States to develop the National Emission Inventory (NEI). The NEI is used by EPA to show national emission trends, as modeling input for analysis of potential regulations, and other purposes.

Most importantly, States need these inventories to help in the development of control strategies and demonstrations to attain the annual and 24-hour $PM_{2.5}$ NAAQS. In April 1999, EPA published the ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' EPA–454/R–99–006. The EPA updated this guidance in November 2005.[46] The current version of this guidance is available at: *http://www.epa.gov/ttn/chief/eidocs/eiguid/index.html.* The EPA developed this guidance document to complement the CERR and to provide specific guidance to State and local agencies and Tribes on how to develop emissions inventories for 8-hour ozone, $PM_{2.5}$, and regional haze SIPs. While the CERR sets forth requirements for data elements, EPA guidance complements these requirements and indicates how the data should be prepared for SIP submissions.

The SIP inventory must be approved by EPA as a SIP element and is subject to public hearing requirements, whereas the CERR is not. Because of the regulatory significance of the SIP inventory, EPA will need more documentation on how the SIP inventory was developed by the State as opposed to the documentation required for the CERR inventory. In addition, the geographic area encompassed by some aspects of the SIP submission inventory will be different from the statewide area covered by the CERR emissions inventory. The CERR inventory was due June 1, 2004, while the SIP inventory due date is later. Because of this time lapse, the State may choose to revise some of the data from the CERR when it prepares its SIP inventory to account for improvements in emissions estimates. If a State's 2005 emission inventory (or a later one) becomes available in time to use for timely development of a nonattainment area SIP, then that inventory can be used. We also encourage the cooperation of the Tribes and the State and local agencies in preparing their emissions inventories.

b. Final Rule

In the proposed rulemaking, in § 51.1008(a), to meet the emission inventory requirements of section 172(c)(3), EPA proposed to require submission of the CERR inventories as well as ''any additional emission inventory information needed to support an attainment demonstration and RFP plan ensuring expeditious attainment of the annual and 24-hour $PM_{2.5}$ standards.'' Section 51.1008(b) set forth specifications for baseline emissions inventories for attainment demonstrations and RFP requirements. Section 51.1008 of the final rule reflects our proposed rule but is different from the draft regulatory text. The proposal did not specify a deadline for

[46] Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' (EPA–454/R–05–001, November 2005.

submission of the emission inventory. To ensure clarity, the final rule contains language addressing the deadline for submission of emissions inventories for nonattainment areas under section 172(c)(3) and section 172(b), and reflects the statutory requirement of no later than 3 years after designation of the area. See § 51.1008(a). In addition, § 51.1008(a)(1) of the proposed rule has been changed for purposes of clarification. The proposal referred to the requirement to submit statewide emission inventories under the (CERR), contained in 40 CFR part 51, subpart A. The final regulatory text clarifies this to refer to the requirements for data elements under 40 CFR part 51, subpart A. The EPA did not intend that the emissions inventories developed under the CERR, which are statewide, would be appropriate for and satisfy all aspects of SIP inventories developed for SIP submissions. Section 51.1008(b) has a minor change to clarify that this subsection refers to the inventories required for submission under paragraph (a) of section 51.1008, and also clarifies the reference to 40 CFR Part 51 subpart A, which currently contains the CERR. In addition, section 51.1008(b) as finalized provides that ''The baseline emission inventory for calendar year 2002 or other suitable year shall be used for attainment planning and RFP plans for areas initially designated nonattainment for the $PM_{2.5}$ NAAQS in 2004.'' The EPA added this flexibility to be consistent with EPA's ozone implementation rule, and to enable a State to use a more recent and improved base year inventory if it is completed in time to allow for timely development of the attainment plan. As noted above, we expect that States will consult the guidance document titled *Emission Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (''NAAQS'') and Regional Haze Regulations,* November 2005,and submit inventories that are appropriate for the geographic area at issue and consistent with regulations and this guidance. We expect the States to include in their SIP submission documentation explaining how the emissions data were calculated.

In the proposed rulemaking, EPA asked ''What emission inventory requirements should apply under the $PM_{2.5}$ NAAQS.'' Several specific questions followed this general question to assess whether or not additional emission inventory requirements or guidance are needed to implement the proposed standard. It was noted in the proposal that the basis for EPA's emission inventory program is specified in the Consolidated Emissions Reporting Rule (CERR) and the related guidance document titled *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations.*

Subsequent to the proposed rulemaking, EPA proposed the Air Emissions Reporting Rule (AERR) at 71 FR 69 (Jan. 3, 2006). The AERR would update CERR reporting requirements by consolidating and harmonizing new emissions reporting requirements with pre-existing sets of reporting requirements under the Clean Air Interstate Rule (CAIR) and the NO_X SIP Call. At this time, EPA is reviewing comments submitted on the AERR proposal and expects to finalize this rulemaking during calendar year 2007. The AERR is expected to be a means by which the Agency will implement additional data reporting requirements for $PM_{2.5}$ SIP emission inventories. Since the AERR rulemaking is in progress, EPA believes it is appropriate to defer responding to certain comments on the proposed $PM_{2.5}$ Implementation Rule related to data reporting and emission inventory requirements that were discussed in the AERR proposal. Those comments will be addressed in the final AERR rulemaking. Significant comments that are separable from the AERR rulemaking and relate to data reporting and emission inventory requirements for the $PM_{2.5}$ NAAQS are addressed below and in EPA's Responses to Comments document.

With respect to SIP emission inventory requirements under this rulemaking, EPA recognizes NO_X, SO_2, VOCs, and ammonia as potential precursors of $PM_{2.5}$ because these pollutants can contribute to the formation of $PM_{2.5}$ in the ambient air. To provide a technical foundation for understanding contributions to $PM_{2.5}$ nonattainment problems and for identifying potential future measures to reduce $PM_{2.5}$ concentrations, EPA is requiring under 40 CFR part 51 subpart A and 40 CFR 51.1008 of this rule that States develop and submit inventories for direct $PM_{2.5}$ and all precursors of $PM_{2.5}$. This requirement stands apart from the policies in this rule regarding the required treatment of various precursor emissions in the development of control strategies for attaining the $PM_{2.5}$ standards. With respect to the latter requirements, EPA has not made a finding that all precursors should be evaluated for potential control measures in each specific nonattainment area. The policy approach in the rule instead requires evaluation of control measures for direct $PM_{2.5}$ and sulfur dioxide in all areas, and describes general presumptive policies that NO_X sources need to be evaluated for control measures in all areas unless findings of insignificance are made, but that control measure evaluations are not required for sources of ammonia and VOC unless findings of significance are made. The rule also provides a mechanism by which the State and/or EPA can make an area-specific demonstration to reverse the general presumption for these three precursors. (See section II.A.8 for additional discussion on these issues.)

c. Comments and Responses

1. Should EPA Specify an Inventory Approval Process?

Comment: Several commenters indicated that the current process of approving SIP inventories by EPA regional offices is appropriate and did not believe that additional approval requirements were necessary. Some commenters noted that flexibility is needed to address regional concerns. Several commenters noted that SIP emission inventories may include requirements or information in addition to data required by the Consolidated Emissions Reporting Rule (CERR). One commenter observed that States routinely develop information outside the CERR for purposes of their SIP development and that additional requirements should not be defined by EPA. Another commenter recommended that requirements for nonattainment area emission inventories be incorporated in the CERR or AERR. A few commenters felt that additional guidance was needed on the SIP emission inventory approval process.

Response: The SIP emissions inventory is a plan provision that must be approved by EPA under section 110(k) of the CAA and is subject to public hearing requirements pursuant to section 110(a)(2). The EPA believes that it need not further specify a SIP approval process for emissions inventories beyond that set forth in the statute, regulation (51.1008), other related sections of this rulemaking and EPA's current guidance. The EPA agrees with many of the commenters that the approval process for SIP emission inventories need not be further defined and that approval should be conducted at the regional level to provide flexibility to address regional concerns. The EPA also agrees that use of Quality Assurance Project Plans developed for each state will be helpful in establishing the proper approval process. The EPA

addresses the issue of what data elements are needed for SIP approval in the responses to comments below, including the responses to comments under Issue 2, below.

As noted by two commenters EPA describes procedures for approval of SIP inventories in a document titled *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,* November 2005. Section 2.5, Inventory Approval, references a memorandum titled *Public Hearing Requirements for 1990 Base-Year Emissions Inventories for Ozone and CO Nonattainment Areas, September 29, 1992.* The EPA intends to use the procedures discussed in the guidance and memorandum to the extent that they are applicable to approval of $PM_{2.5}$ emission inventories submitted as part of the SIP. 40 CFR 51.1008 sets forth the requirements for emissions inventories under section 172(c)(3), which will be reviewed in the context of the SIP approval process. See also 40 CFR 51.1007 and 51.1009 regarding attainment demonstrations and RFP plans. Thus, EPA believes that its existing SIP approval process is adequately described in statute, regulation and guidance, and that it provides flexibility to deal with issues that arise in individual nonattainment areas.

2. Are the Data Elements Specified Within the CERR Sufficient To Develop Adequate SIPs? For Example, in the Determination of RACT, Should More Information on Existing Control Devices Be Required?

Comment: Several commenters recommended that any additional reporting requirements should be addressed through the CERR/AERR and associated guidance and that no additional reporting requirements should be specified in the Rule. Another commenter stated that more detail concerning control equipment would be helpful but was concerned about the additional burden on industry compared to the benefit to State and local agencies, and suggested that this would be further addressed in the context of comments on the AERR. One commenter believed that the reporting requirements within the CERR are sufficient to develop a $PM_{2.5}$ SIP for most areas but noted that nonattainment areas may require additional inventory information which will need evaluation on a case-by-case basis. The commenter further stated that any additional inventory requirements should be identified during the SIP development process, in cooperation with the EPA regional office, and should not be part of this rule.

Response: In section 40 CFR 51.1008(a)(1) of the final rule, EPA incorporates the requirements for data elements required under 40 CFR part 51, subpart A, which contains the CERR, for inventories submitted under this section. The EPA notes, however, that the issue of whether to require additional reporting requirements beyond those required in the CERR is currently being addressed in the Air Emissions Reporting Rule (AERR) 71 FR 69 (January 3, 2006). At this time EPA believes that the requirements for data elements under the CERR, in conjunction with the other provisions of 40 CFR 51.1008, as well as 40 CFR 51.1007 and 51.1009, are generally adequate to meet the needs for $PM_{2.5}$ nonattainment emission inventory SIP development. The AERR as proposed includes additional provisions which may be helpful for $PM_{2.5}$ SIP emission inventory development. The EPA will address this aspect of the AERR, including comments received in this rulemaking on the issues raised and the additional elements proposed in the AERR, in the final AERR rulemaking. This final rule indicates that States shall include data elements for $PM_{2.5}$ inventories as required under 40 CFR part 51, subpart A. In addition, 40 CFR 51.1008(a)(2) requires that States submit ''any additional emission inventory information needed to support an attainment demonstration and RFP plan ensuring expeditious attainment of the annual and 24-hour $PM_{2.5}$ standards.'' See also 40 CFR 51.1007 and 51.1009. Thus States should be aware that data elements in addition to those required under the CERR may be needed to support attainment demonstrations and RFP inventories. Additional data elements needed for other SIP emission inventory purposes should be handled on a case-by-case basis. Because of the nature of SIP development, which varies depending on the nature and needs of individual areas, it may not be possible to require a level of detail in regulations that will enable a ''one-stop-shop'' information request as suggested by one of the commenters.

As recommended by one commenter, guidance on reporting requirements is contained in *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations* (EPA–454/R–05–001, November 2005). For example, Section 3.2.1 for Pollutant and Pollutant Precursors to be Inventoried presents guidance to states on $PM_{2.5}$ pollutants and their components that should be reported for $PM_{2.5}$ SIP development. See also section 5, Emission Inventory Development, and other related sections of the guidance.

With respect to the comment on additional detail on control requirements, see also EPA's Response to Comment Document.

3. Is the Current Approach for Reporting Specific Pollutants Sufficient, or Should EPA Require More Specific Emission Component Reporting Such as Groups of Compounds or Reporting of Elemental Carbon and Organic Carbon?

Comment: Currently the CERR requires the reporting of SO_2, VOC, NO_X, CO, Pb, PM_{10}, $PM_{2.5}$, and NH_3. VOC and PM are speciated by the emissions processing models based on speciation profiles for specific source categories. Most commenters supported retaining the existing reporting requirements under the CERR. Others encouraged expansion of the requirements to include reporting of specific organic compounds and organic fractions although some thought this should be a requirement while others thought it should be optional. One commenter thought that EPA should work with industry trade groups to develop and improve the speciation profiles of the most important source categories rather than asking the state and local agencies to characterize VOC and PM species. Several commenters thought that EPA should encourage the reporting of PM components (filterable, condensable and total) for development of control strategies and attainment demonstrations. Another commenter noted that including condensable emissions raises ''uncertainty'' issues and urged EPA to devote resources to developing better test methods. One commenter believed that in addition to reporting $PM_{2.5}$ and its components, states should report all precursors to $PM_{2.5}$ (SO_2, NO_X, ammonia and VOC).

Response: The EPA agrees with the commenters who argued that the need for additional speciation should be determined based on specific SIP needs. 40 CFR part 51, subpart A which contains the CERR, does not require reporting of specific compounds or compound groups nor does it require reporting of organic and elemental carbon fractions. As discussed in the response to comment above, EPA believes that the requirements for data elements contained in 40 CFR part 51 subpart A, in conjunction with the provisions of 40 CFR 51.1008, are generally adequate to meet the needs for $PM_{2.5}$ nonattainment emissions

inventory SIP development. Section 51.1008(a)(1) applies the data element requirements contained in 40 CFR part 51 subpart A. Section 51.1008(a)(2) requires States to submit ''any additional emission inventory information needed to support an attainment demonstration and RFP plan ensuring expeditious attainment of the annual and 24-hour $PM_{2.5}$ standards.'' Thus data elements in addition to those required under the CERR may be needed to support attainment demonstrations and RFP inventories under 40 CFR 51.1008(a)(2). Additional data elements needed for other SIP emission inventory purposes should be handled on a case-by-case basis. Where States need to develop speciated emissions for $PM_{2.5}$ SIP emission inventories, EPA provides guidance in the document titled *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Ozone Regulations,* November 2005. Section 3.2.1, Pollutants and Pollutant Precursors to be Inventoried identifies pollutants and their components to be reported for $PM_{2.5}$ SIPs. Section 3.3.5, Speciation Procedures, discusses the preferred approach for speciating $PM_{2.5}$ emission inventories for use in ambient air quality simulations. The approach discussed in the guidance is application of emission models which use speciation profiles to estimate the mass of specific compounds and compound groups for VOC and elemental and organic carbon fractions for PM. The EPA encourages further research and development of technical tools to better characterize emissions inventories for specific VOC compounds and to determine the extent of specific VOC compounds and organic PM mass. The EPA also encourages States to continue efforts to refine their ammonia inventories. See sections II.A.3 and II.A.4 of the Preamble.

As discussed in the guidance document, EPA encourages reporting of organic and elemental fractions of $PM_{2.5}$ by state agencies (see Section 3.2.1, Pollutants and Pollutant Precursors to be Inventoried). While elemental or black carbon (EC/BC) and organic carbon (OC) will be identified in default speciation profiles, more locally-specific data should be collected where available as an input to model preprocessing. Where such data are available, they should be provided to EPA to help in improving EPA's speciation profiles. Certain organic gases have been identified as precursors to secondary organic aerosols (SOA). Toluene, xylene and ethyl benzene are known to be important SOA precursors. Additional organic gases may be identified by ongoing research. While these gases will be identified in default speciation profiles, more locally-specific data should be collected, where available, as an input to model preprocessing. State, local and Tribal agencies can contact EPA's EIAG for more information.

EPA agrees with the comment that it should take the lead in updating VOC and PM profiles for most important source categories. The Agency is close to completing a multi-year effort to update the SPECIATE database. SPECIATE is EPA's repository of Total Organic Compound (TOC) and PM speciated profiles for a wide variety of sources. The profiles in this system are provided for air quality dispersion modeling and as a library for source-receptor and source apportionment type models. This recent initiative to update SPECIATE was needed because speciated emissions profiles continue to be developed and the data in the existing EPA database (SPECIATE 3.2) was becoming outdated.

This work was coordinated with interested parties including industry through an Agency sponsored workgroup. It has depended largely on the collection and review of existing profile data to accomplish, as the commenter suggests, delivering the best results for the least amount of resources spent. Previously, these data were not widely available to emission inventory developers and lacked the quality assurance review and evaluation needed to develop profiles used by emissions models to generate speciated emissions. As suggested by the commenter, the workgroup was used to help prioritize source categories for investigation to ensure that updates to existing profiles and development of new profiles focused on areas of greatest need.

SPECIATE v4.0 contains more than 2500 source profiles and is currently undergoing peer review. The EPA expects the final work product to be available for use by emission inventory preparers during early calendar year 2007 and it will be distributed through EPA's CHIEF Web site.

The EPA agrees with a commenter who noted that in order to meet the requirements under section 172(c) of the CAA for ''a comprehensive, accurate, current inventory * * *,'' condensable emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors are important to support development of local control strategies and attainment demonstrations. The EPA believes that the final rule provides for the submission of $PM_{2.5}$ nonattainment area inventories meeting the requirements of section 172(c)(3).

Section 51.1008(a)(1) requires that States submit emission inventories for $PM_{2.5}$ that satisfy the data elements reporting requirements under 40 CFR part 51 subpart A, which contains the CERR. The CERR requires reporting of ''Primary $PM_{2.5}$'' which is defined as the sum of the filterable and condensable portions of $PM_{2.5}$. Therefore, SIP base year inventories will include the condensable fraction of PM which was of concern to several commenters. The CERR also requires reporting of SOx, NO_X, ammonia and VOC which are potential precursors to $PM_{2.5}$. EPA notes that the AERR as proposed would require reporting of the same precursors and would also require reporting of Primary $PM_{2.5}$. However, the proposed AERR requires the reporting of the filterable and condensable fractions of $PM_{2.5}$ (optional under the CERR) in addition to the primary $PM_{2.5}$ total mass. The EPA will address this requirement in its final rulemaking on the AERR.

As noted above, in addition to the data element requirements under section 51.1008(a)(1), under section 51.1008(a)(2) States must submit ''any additional emission inventory information needed to support'' an attainment demonstration and RFP plan. Thus States should be aware that data elements in addition to those required under the CERR may be needed to support attainment demonstrations and RFP inventories under 40 CFR Part 51.1008(a)(2). Additional data elements needed for other SIP emission inventory purposes should be handled on a case-by-case basis.

The EPA is aware of the issues raised by one commenter regarding measurement uncertainty for condensable PM. This issue is addressed in detail under Section II.L of the preamble (''Condensable particulate matter test methods and related data issues,''). We believe that for purposes of emissions inventories and attainment demonstrations, States should continue to describe the impacts of baseline emissions and develop future air quality strategies using information available on primary $PM_{2.5}$ emissions, including condensable $PM_{2.5}$. However, with respect to developing enforceable emissions limits for condensable $PM_{2.5}$ emissions, the final rule reflects EPA's adoption of a transition period during which we will allow time for development of emissions limits for condensable $PM_{2.5}$. See 40 CFR 51.1002(c).

For additional comments and responses related to speciation issues,

see the Response to Comments Document.

4. Should EPA Require That States Develop Their Own Estimates for Area and Mobile Source Emissions?

Comment: The CERR allows states to adopt EPA developed emission estimates from area and mobile sources in lieu of making those estimates themselves if they accept these estimates for their emission inventory. One commenter thought that EPA should require States to develop their own estimates for area and mobile sources based on the specified 2002 base year. Three commenters thought that the existing process (under the CERR) was adequate. One of the commenters expressed concerns about the reporting burden for States if they were required to compile their own mobile and area source inventories. Another commenter did not believe that States should be required to submit data on area and mobile sources but noted that many States would continue to run the MOBILE model for onroad mobile sources and calculate area source data for SIP emission inventories. Two of the commenters thought that the existing process provided flexibility needed by States to focus on source categories of most concern and address problematic areas with special inventory needs. One commenter recommended that EPA continue developing models for area and mobile sources.

Response: The EPA strongly encourages states to submit their own estimates for area (nonpoint) and mobile sources unless they can establish that it is impracticable to do so, given time and resources. We will continue, in appropriate circumstances, to allow a State to use EPA-developed emission estimates for mobile and nonpoint sources in lieu of making those estimates itself if the State accepts the estimates for its emission inventory. While this has been the case with respect to reporting under the CERR for the 3-year cycle inventories, for development of emission inventories to support $PM_{2.5}$ SIPs, the ability to rely on EPA-developed emission estimates for development of emission inventories to support $PM_{2.5}$ SIPS is more complex and problematic. For mobile sources, the practical use of these EPA-developed mobile source inventories in a SIP may be very limited. While EPA has developed inventories for 2002, states will still have to develop attainment year inventories, including projections of future activity and the effects of control measures. For mobile sources, future year inventories are not developed by simply growing a base year inventory, but instead are developed by running an emissions model with appropriate inputs for the future year. In order to develop an attainment demonstration that accurately accounts for the change in emissions from the base year to the attainment year, inventories for both of those years will need to be developed using consistent methods and modeling assumptions. For mobile sources especially, it may be very difficult for states to replicate the methods used by EPA for the base year when creating the attainment year inventory.

In addition, states cannot use the EPA developed inventories for the base year if newer models or planning assumptions are available at the time they begin working on the SIP. For example, if new or better information about the composition of the local fleet of highway vehicles in the base year becomes available to the state after the EPA developed inventories were created, that information should be used by the state to create a new base year inventory.

Given the need for emissions modeling for mobile sources in the projection year, the need for consistency in tools and methods between the base year and attainment year, and the need to use latest available models and planning assumptions, EPA believes that most if not all states will choose to develop their own base year inventories for mobile sources.

With respect to nonpoint (area) source emissions, States must make every effort, consistent with available timing and resources to ensure that their area source emission inventories are as accurate as possible. While EPA prepares a national area source emission inventory that covers all counties, it is designed for national analyses. EPA does not have access to the more detailed information available to States that is used to develop an area source inventory. Therefore, states should develop as much of their area source inventory as possible using local and State information, and in particular should develop the inventory for the most significant area source categories which are critical to ensuring overall accuracy. Where time and resources preclude a State from developing the estimates for less-critical area source categories, the State may rely on EPA-developed area source emissions information for those categories.

The EPA points out that although guidance has recommended that 2002 be used as the base year for emissions inventories for states initially designated nonattainment in 2004–5, states remain free to use an alternate base year, as appropriate. Section 51.1008(b) provides in relevant part that ''The baseline emission inventory for calendar year 2002 or other suitable year shall be used for attainment planning and RFP plans for areas initially designated nonattainment for the $PM_{2.5}$ NAAQS in 2004.''

EPA agrees with the comment that it should continue to develop models and other emission estimation tools. As an example, EPA's Office of Transportation and Air Quality (OTAQ) is developing a modeling system termed the Motor Vehicle Emission Simulator (MOVES). This new system will estimate emissions for on-road and nonroad sources, cover a broad range of pollutants, and allow multiple scale analysis, from fine-scale analysis to national inventory estimation. When fully implemented MOVES will serve as the replacement for MOBILE6.2 and NONROAD. In addition, as the NEI is reengineered, OAQPS will examine the need for updating emissions estimation guidance materials and developing tools which will assist State agencies in estimating emissions from area source categories. See also EPA's ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' November 2005.

5. Other Inventory Issues

The EPA's responses to additional comments concerning emission inventory issues can be found in EPA's Response to Comments Document.

L. Condensable Particulate Matter Test Methods and Related Data Issues

a. Background

As noted in the preamble to the November 1, 2005 proposed rule, certain commercial or industrial activities involving high temperature processes (fuel combustion, metal processing, cooking operations, etc.) emit gaseous pollutants into the ambient air which rapidly condense into particle form. The constituents of these condensed particles include, but are not limited to, organic material, sulfuric acid, and metals. Because condensable emissions exist almost entirely in the 2.5 micrometer range and smaller, these emissions are inherently more significant for $PM_{2.5}$ than for prior particulate matter standards addressing larger particles. Therefore, we believe that it is important that the air quality management of particulate matter promote a comprehensive approach to condensable particulate matter.

We proposed to require a comprehensive inclusion of condensable PM for all aspects of SIP development for $PM_{2.5}$. Under the proposal, EPA would require condensable PM to be considered in the emissions inventories and analyses used in attainment demonstrations. Also under the proposal, any stationary source emissions limits developed to implement RACT or RACM would reflect control and measurement of condensable PM.

We received numerous comments on whether these requirements were unreasonable in light of the current state of knowledge of and uncertainties around the measurement of direct $PM_{2.5}$. Most commenters supported the overall view that condensable PM should be addressed in order to provide a complete air quality management program for $PM_{2.5}$. On the other hand, many commenters raised concerns about the availability and implementation of test methods and related issues about the uncertainties in existing data for condensable $PM_{2.5}$. As a result of the concerns, these commenters believed EPA would be premature in requiring a comprehensive evaluation of condensable $PM_{2.5}$, especially as it related to developing any new emissions limits for stationary sources. In recognition of these concerns, the final rule reflects EPA's adoption of a transition period during which we will assess possible revisions to available test methods and we will allow time for States to update emissions inventories as needed to address direct $PM_{2.5}$ emissions. In this section of the preamble, we outline the elements of the final rule addressing inventories reflecting control of direct $PM_{2.5}$. We also discuss the specific comments raised regarding methods for measuring direct $PM_{2.5}$, both filterable and condensable PM, in implementing the rule. The particular comment areas include defining test methods, quantifying direct $PM_{2.5}$ for inventories, and a transition period for developing effective regulations. Below are also our responses to those comments.

b. Final Rule

For the final rule, EPA addresses two broad issues related to inclusion of condensable PM. The first issue is whether emissions inventories and attainment demonstrations should include the condensable portion of direct $PM_{2.5}$ emissions. The second issue is whether direct $PM_{2.5}$ emissions limitations established by States for purposes of RACT and RACM must include limits on condensable PM emissions or limits on total direct $PM_{2.5}$ that includes the condensable PM fraction.

For purposes of developing emissions inventories and attainment demonstrations, the final rule reflects a requirement to account for significant contributors of direct $PM_{2.5}$ emissions, both filterable and condensable $PM_{2.5}$. We recognize that some States have established inventories consistent with requirements of the consolidated emissions reporting rule (CERR) to report direct $PM_{2.5}$ emissions, including condensable PM, in each inventory revision. While uncertainties remain with significant issues to address related to our current knowledge base on condensable PM emissions, we believe that for purposes of emissions inventories and attainment demonstrations, States should continue to describe the impacts of baseline emissions develop future air quality strategies using information available on direct $PM_{2.5}$ emissions including condensable PM.

With respect to developing enforceable emissions limits for condensable PM emissions, we note that some States have established emissions limits or otherwise require PM emissions testing that includes measurement of condensable PM. We recognize that in some States there remain questions about the viability of available test methods, the availability of representative direct $PM_{2.5}$ emissions data, the uncertainty of the methods used to establish inventories, and the short time frame within which States must develop SIPs. In response we have decided to provide a transition period for developing emissions limits and regulations for condensable $PM_{2.5}$. During this transition period, we will provide technical support to States as requested in establishing effective $PM_{2.5}$ emissions limits and corresponding emissions testing requirements.

As described further below, we will devote resources early during this transition period to assessing and improving the available test methods for condensable PM. During this transition period, we will also solicit the involvement of stakeholders with an interest in conducting emissions testing to collect updated direct $PM_{2.5}$ emissions data. The purpose of these stakeholder projects will be to collect new direct filterable and condensable PM emissions data using methodologies that provide data more representative of source direct $PM_{2.5}$ emissions. The EPA, States, and others will use these data to improve emissions factors and to help define or revise source emissions limits in permits and State implementation plans.

The time required for our stakeholders and EPA to complete the test method assessment will limit the degree to which State and local agencies can address effectively the necessary direct $PM_{2.5}$ regulations in inventories and in the 2008 SIP submittals. In recognition of this, we will not require that the emissions limits included in the 2008 submittals account for the condensable fraction of direct $PM_{2.5}$ or to establish limits for total direct $PM_{2.5}$, including condensable PM.

We will expect States to continue developing more complete inventories with regard to direct $PM_{2.5}$ emissions, particularly for condensable PM, during this transition period. We expect no such allowance period for method assessment or data collection to be necessary for implementing regulations addressing precursor $PM_{2.5}$ emissions.

The period of transition for establishing emissions limits for condensable direct $PM_{2.5}$ will end January 1, 2011. We expect States to address the control of direct $PM_{2.5}$ emissions, including condensable PM, with any new actions taken after January 1, 2011. For example, States must address condensable PM emissions in any direct $PM_{2.5}$ emissions limits resulting from midcourse reviews. Additionally, EPA expects that any direct $PM_{2.5}$ regulations or limits developed under any new NAAQS for particulate matter would also address condensable PM emissions.

Notwithstanding the issues and uncertainties related to condensable PM, EPA encourages States to identify measures for reducing condensable PM emissions, particularly where those emissions are deemed significant contributors to the control strategy needed for expeditious attainment. We wish to clarify that in order to take credit in the SIP for reduction of any such condensable PM emissions, there must be enforceable limitations that ensure that reduction in condensable PM emissions. These enforceable limits could take the form of a limitation on the condensable PM emissions or total direct $PM_{2.5}$ emissions (or a commitment to develop such limitations after the end of the transition period described above). Alternatively, these enforceable limitations could provide for enforceable conditions that ensure that the effect on condensable PM emissions is assured (for example, enforceable limitations on operating temperature, or limits on FGD scrubber operations which have the effect of reducing condensable PM emissions).

c. Comments and Responses

We received many comments on quantification of direct $PM_{2.5}$ emissions particularly about the need to conduct further validations for the available test methods, the availability of direct filterable or condensable $PM_{2.5}$ data or lack thereof for representative baselines, and the procedures for applying baseline data for developing effective regulations.

1. Method 202

Comment: A majority of commenters characterized the performance of Method 202 as lacking in reliability. Some commenters characterized the formation of artifacts in Method 202 as significant and the primary reason for their recommendation to defer the inclusion of condensable particulate matter in the baseline assessments and regulatory development for the initial SIPs. The commenters stated that the principal artifact formed when using Method 202 was the result of SO_2 dissolving in the impinger water and converting to sulfuric acid.

Response: We agree that SO_2 in particular, and perhaps other gaseous compounds, can react with the collecting liquids used in the method to form materials (artifacts) that would not otherwise be solid or liquid or would not condense upon exiting the stack. We believe that when Method 202 is applied appropriately (i.e., with the N_2 purge as prescribed), the SO_2 artifact formation is reduced by as much as or more than 90 percent; however, we agree that further verification and refinement would be appropriate to verify the potential for artifact formation.

In response, we are undertaking laboratory studies in collaboration with several stakeholders to characterize the artifact formation and other uncertainties associated with conducting Method 202, and to identify procedures to be used in applying methods to minimize uncertainties. We are involving stakeholders representing industry and State and local agencies in the project design and results review. Stakeholders who have expressed interest in participating in these studies include the Electric Power Research Institute, companies associated with the National Environmental Development Association's Clean Air Project (NEDA/CAP), the Portland Cement Association, the Lime Manufacturing Association, the American Foundry Association, the National Aluminum Association, and several governmental organizations represented by National Association of Clean Air Agencies. Other parties may participate in the study as well.

By the end of 2007, we intend to have conducted a comprehensive laboratory study that examines the relationship between several critical condensable PM sampling and analysis parameters (e.g., SO_2 concentration, moisture concentration, sample duration, and water acidity) and the artifact formation associated with the measurements. One intended result of the project will be identifying possible modifications to Method 202 to minimize and quantify the uncertainties. We will publish the results of the laboratory study along with an assessment of other input and data from stakeholders on the EPA website and, to the extent possible, in a widely circulated peer review journal. Also, to the extent necessary, we intend to propose revisions to the method to incorporate improvements and to clarify application.

2. Conditional Test Methods 039 and 040

Comment: Several commenters cited as a deficiency that neither conditional test method 040 (CTM–040) for measuring filterable $PM_{2.5}$ nor the dilution sampling method (CTM–039) has been thoroughly validated through EPA Method 301. There were also comments that neither of the CTMs was published in the **Federal Register**.

Response: We agree with the comments that neither method has been subjected to adequate public notice and comment rulemaking. Taking that step will facilitate application of the appropriate methods for implementing the SIPs. On the other hand, there are a number of levels of validation already achieved for one or more of these methods that will determine what, if any, additional validation work will be necessary. For example, while we could seek resources to evaluate dilution sampling technology, including CTM–039, and to request public involvement in the project planning, conduct, and review with the possibility of a **Federal Register** proposal, our preference would be to incorporate by reference an approved voluntary consensus test method (e.g., ASTM standard).

We believe that a dilution sampling method for measuring direct $PM_{2.5}$ eliminates essentially all artifact formation and provides the most accurate emissions quantification. To the extent that we need to and can secure resources and stakeholder interest, we plan to perform additional validation testing of CTM–039 or other dilution sampling technologies to characterize the precision of this approach. In conjunction with our validation efforts, we intend to continue participation in the ASTM D22 committee to develop and publish a dilution sampling method and encourage other volunteers on that committee to approve the consensus based dilution sampling method. We believe that this work is nearly complete. As outlined above, we are already undertaking laboratory studies to assess the method and to identify possible modifications to reduce formation of these artifacts. Preliminary laboratory evaluations conducted by EPA and by Environment Canada[47] indicate that additional artifact reductions of 60 to 90 percent may be achieved with other minor modifications to Method 202. These preliminary findings indicate that Method 202 is essentially a viable method that these proposed laboratory studies will serve to enhance. Within 18 months we intend to propose, if necessary, modifications to Method 202 or similar methodologies suitable for measuring condensable $PM_{2.5}$.

As for CTM–040, we believe that further validation of this method is unwarranted since the technology and procedures are based upon the same as evaluated for promulgated Method 201A. Method 201A has undergone public review and comment (55 FR 14246, April 17, 1990). Also, as noted earlier, we have already begun laboratory and data evaluation work the possible result of which would be a revised Method 202 to be proposed in the **Federal Register** to include improvements indicated by the evaluation. At that same time, we may propose CTM–040 to be used in combination with Method 202 for measuring direct $PM_{2.5}$ with additional guidance on appropriate approaches to testing for direct $PM_{2.5}$ emissions from various types of control measures (e.g., electrostatic precipitator and flue gas desulphurization combinations).

3. Role of Condensable PM Emissions in Defining RACT

Comment: Commenters indicated that States must reassess and revise emissions limits if the States adopt methods for measuring direct $PM_{2.5}$ including condensable PM where not required previously. Commenters noted that most existing PM emissions limits are not reflective of data collected with

[47] ''Optimized Method 202 Sampling Train to Minimize the Biases Associated with Method 202 Measurement of Condensable Particulate Matter Emissions,'' John Richards, Tom Holder, and David Goshaw, Air Control Techniques, P.C.; Air & Waste Management Association, Hazardous Waste Combustion Specialty Conference AWM, November 2–3, 2005, St. Louis, MO.

methods that measure condensable or filterable $PM_{2.5}$ and, therefore, not enforceable using a new or different test method.

Response: We agree that coordinating the test method with the pollutant defined by the emissions limit is critical to an effective regulation. In the case of direct $PM_{2.5}$ regulations, the methods for measuring filterable and condensable PM provide data that are significantly different than do methods often used in implementing many current regulations (i.e., filterable plus condensable $PM_{2.5}$ versus filterable PM only). The existing PM emissions regulations implementing many current SIPs have focused almost exclusively on filterable PM at stack conditions or other elevated temperatures (e.g., 250 °F) with little or no measurement of condensable PM, let alone filterable $PM_{2.5}$. These deficiencies exist in spite of the Agency's policies and guidance presented in documents such as the 1987 PM_{10} SIP Development Guideline [48] and the General Preamble for the Implementation of Title 1 of the Clean Air Act Amendments of 1990 [49] issued in 1992. These documents set forth Agency policy stating that direct PM_{10} and direct $PM_{2.5}$ emissions include both filterable and condensable particulate matter. The policies are reinforced by a 2005 directive from the CAA Advisory Committee.[50]

More to the point, the use of test methods that quantify only filterable PM would limit the capability of any assessment of control measures available for developing cost effective strategies to achieve attainment of the $PM_{2.5}$ NAAQS. Examples include an attainment demonstration that includes control methodologies for PM precursors which are likely to result in a significant decrease in the emissions of direct $PM_{2.5}$ (for example, alkaline scrubbers to reduce SO_2 emissions) and incorporate these direct $PM_{2.5}$ emissions reductions in their attainment demonstration or allow for the use of these reductions as credits for other programs.

Some States may decide to measure and control condensable PM emissions prior to the end of the transition period. To the extent that a State has the supporting technical information and test methods, the State may also assess the capabilities of current control technologies, possible modifications to such technologies, or new technologies as appropriate relative to control of condensable $PM_{2.5}$ emissions in developing effective control strategies and regulations. As an example, a specific approach for controlling condensable PM could be a change in control device operating temperature to achieve necessary emissions reductions. We also note that it is important that implementation of any new or revised rules and test methods should be prospective and clearly differentiated from existing regulations to avoid confusion over status of compliance relative to existing PM emissions limits.

4. Sufficiency of Current Baselines Relative to Direct $PM_{2.5}$ for Regulatory Development

Comment: Many commenters indicated that the currently available baselines for direct $PM_{2.5}$ emissions are not sufficient for States to develop effective emissions control regulations. One commenter claimed that States will need additional information regarding how to arrive at enforceable $PM_{2.5}$ emissions limitations through application of correlations to existing PM_{10} emissions limitations.

Response: We agree that State inventories accounting for direct $PM_{2.5}$ emissions are important to the NAAQS implementation decision-making process. For example, the current national emissions inventories have characterized the contribution of the condensable PM emissions to range from 40 to 80 percent of the direct $PM_{2.5}$ emissions particularly from combustion source categories. We also agree in many cases, the emissions baselines are not sufficiently representative of significant direct $PM_{2.5}$ contributors to allow States to develop effective and enforceable emissions limitations for sources that may require control of direct filterable or condensable $PM_{2.5}$ emissions in order for States to come into attainment with the $PM_{2.5}$ NAAQS.

We note that States are already required under the consolidated emissions reporting rule (CERR) to report direct $PM_{2.5}$ emissions, including condensable PM, in each inventory revision. That means that inventories and associated baselines must address sources and contributions of direct $PM_{2.5}$ emissions, both filterable and condensable PM, from individual sources and groups of sources as well as for future year projected emissions. These data are important for the purposes of calculating emissions reductions and demonstrating that such reductions are attributable to the control measures being implemented.

In taking the process to the next step, we contend that many current baselines established using the available direct filterable and condensable $PM_{2.5}$ national industry average emissions factors (e.g., those found in AP–42 and WebFIRE, *http://www.epa.gov/ttn/chief/efpac/index.html*) often are of quality insufficient to establish effective source-specific emissions limits. First, national industry average emissions factors are subject to significant uncertainties as they usually represent data from a very limited number of example facilities in a category and for a very limited number of operating conditions. Second, the available emissions factors databases may not include direct $PM_{2.5}$ emissions data for specific source types that appear in some State and local inventories.

In short, we believe that States should rely on directly measured emissions data in developing source category or pollutant-specific emissions limits for regulations. This approach is preferable to the use of these national industry average emissions factors such as those found in AP–42. If there are no directly measured emissions data available from the subject sources, national average emissions factors should be used only with appropriate and significant adjustments for uncertainty. Based on our initial study [51] of the uncertainties associated with national average emissions factors when applied to site-specific or rule-development activities, we would expect multipliers of 0.1 to 3.3 for an A-rated national average filterable and condensable direct $PM_{2.5}$ emissions factors. The level of a particular multiplier would depend on how representative of the source category the applicable emissions factor is, the quantity of data supporting that emissions factor, and the specific application. Determining what adjustment may apply for a particular application requires detailed knowledge of the emissions control variability, the expected range of operational and process variability, and the statistical uncertainty in the measured emissions data. While more general adjustments to emissions factors are possible for these purposes, we believe that the better approach is to improve and update the emissions factors used in the database for a particular area with measured

[48] U.S. Environmental Protection Agency. PM–10 SIP Development Guideline. Office of Air Quality Planning and Standards, Research Triangle Park, NC. EPA Publication No. EPA–450/2–86–001. June 1987.

[49] The General Preamble is available online at *http://www.epa.gov/ttn/oarpg/t1pfpr.html.*

[50] Clean Air Act Advisory Committee, Recommendations to the Clean Air Act Advisory Committee—Phase I and Next Steps, Air Quality Management Work Group, Environmental Protection Agency, *http://www.epa.gov/air/caaac/pdfs/report1-17-05.pdf*, January 2005.

[51] Option Paper 4—Providing Guidance Regarding The Use Of Emissions Factors For Purposes Other Than Emissions Inventories, September 2005, *http://www.epa.gov/ttn/chief/efpac/projects.html.*

direct $PM_{2.5}$ emissions data. For these reasons and to allow time for data collection and analysis, we have determined the need for a period of transition for States in developing direct $PM_{2.5}$ emissions reduction strategies.

5. Transition Period

Comment: Some commenters suggested that EPA should allow States to base their initial 2008 SIPs on NO_X, SO_2, and filterable PM or PM_{10} (as a surrogate for filterable $PM_{2.5}$) rather than require State and local agencies to develop direct $PM_{2.5}$ emissions regulations immediately. Commenters suggested that EPA provide a transition period for sources to adopt SIPs that address direct $PM_{2.5}$ and to apply the appropriate test methods. The commenters proposed that during this transition period, a source should be able to continue to use Method 5, Method 17, or whatever method was used to set the underlying limit contained in the source's title V operating permit. Commenters believe that such a transition plan must provide additional time to collect data related to condensable PM emissions. Commenters believe that this additional time is necessary because it is unrealistic to develop SIP revisions addressing condensable emissions by April 2008. Other commenters suggested that source emissions inventories used for regulatory decision-making and identifying regulatory control measures must be based on accurate measurements.

Response: As outlined above, we agree that a transition period should be allowed to allow time to resolve and adopt appropriate testing procedures for condensable PM emissions, to collect total (filterable and condensable) $PM_{2.5}$ emissions data that are more representative of the sources in their areas, and develop effective regulations for control of direct $PM_{2.5}$, including condensable PM.

6. Data Collection for Regulatory Development

Comment: Several commenters recommended that EPA should be responsible for developing data of emissions from common sources of direct $PM_{2.5}$.

Response: We disagree with the commenters' recommendation that EPA should be primarily or solely responsible for developing baseline data on common sources of direct $PM_{2.5}$ emissions. Commenters are suggesting that we should collect data representative of direct $PM_{2.5}$ emissions from source categories potentially subject to regulation of direct $PM_{2.5}$ emissions. Furthermore, they suggest that we expand or improve the current compilation of national industry average emissions factors such as found in AP–42 and WebFIRE (*http://www.epa.gov/ttn/chief/efpac/index.html*). Given the limited extent to which national industry average emissions factors are suitable for developing State or local regulations that set limits on direct $PM_{2.5}$ emissions, we believe that it is inherent that States instead have primary responsibility for reviewing and applying measured emissions data collected from their sources in enhancing their current baselines. In some cases, this will mean that States and other stakeholders will need to conduct more focused direct $PM_{2.5}$ emissions data collection and improve relevant emissions factors.

This approach is appropriate for several reasons. First, we believe that stakeholders other than EPA are better equipped to identify specific data needs and that they have the means to collect the data. Second, we believe we are better positioned to provide guidance on test planning, data collection, and emissions factors calculations with a less direct role in data collection and evaluation. Third, we believe that States in need of additional information can also benefit from experience of other States with similar source types and who are developing regulations to implement the NAAQS including the control of condensable PM. See also the discussion in section II.L.2.c.1 above on the currently active collaborative study to assess direct $PM_{2.5}$ emissions measurement technologies and to collect updated direct $PM_{2.5}$ emissions data.

7. Developing Effective Regulations for Direct $PM_{2.5}$, Including Condensable PM, Emissions

Most current PM regulations focus on the control and measurement of filterable PM emissions and do not account for condensable PM emissions. At issue are assessing and accounting for the differences in methodology and applicable limits when changing to a program designed to achieve reductions in $PM_{2.5}$ emissions, including condensable PM.

Comment: A number of respondents commented that EPA needs to promulgate a $PM_{2.5}$ test method and adopt regulatory language that determines the $PM_{2.5}$ limits based on that promulgated $PM_{2.5}$ test method as soon as possible. Other commenters suggested that EPA and States have no choice but to revise the underlying standard by adopting new monitoring requirements through a notice and comment rulemaking. Further, these commenters indicate that it is essential that EPA require that no change in a test method or in methods of monitoring for determining compliance until such time as EPA or the permitting agency have undertaken a notice and comment process to determine how the emissions limitations must be revised. A number of commenters cited specific components necessary for effective regulations.

Response: We agree that notice and comment rulemaking is appropriate for establishing effective regulations. As noted above, we are already undertaking a study of the available test methods to determine the need for regulatory revisions. We also agree that new regulations limiting direct $PM_{2.5}$ emissions must include effective emissions limitations to the extent that a State must reduce sources of direct $PM_{2.5}$. How a State determines to take such regulatory action depends on the State's implementation plan. Regarding the specific components necessary for effective regulations, see section O below on enforcement and compliance issues.

M. Improving Source Monitoring

a. Background

In the November 1, 2005 proposal, we discussed a number of actions the EPA would undertake to improve the effectiveness of existing and new regulations with improved source monitoring provisions. Specifically, we repeated a plan outlined on January 22, 2004 (69 FR 3202; a **Federal Register** notice describing requirements for monitoring in operating permits), that includes a four-part strategy for improving monitoring of emissions at the source where necessary through rulemaking. One element of that plan is for EPA to develop guidance on how States can reduce $PM_{2.5}$ emissions by improving source monitoring related to $PM_{2.5}$ emissions limits. We noted that we expect to describe in such guidance methods of improving monitoring frequency or adopting more appropriate monitoring for States to consider in developing their $PM_{2.5}$ SIPs and to illustrate the amount of credit that States could receive in $PM_{2.5}$ SIPs for adopting such improved monitoring. We suggested that States with areas where additional reductions are needed to help the area achieve compliance with the NAAQS could implement improved monitoring measures to obtain additional emissions reductions. We put forward that State agencies could receive SIP credits as a result of enforceable improved monitoring or

voluntary emissions monitoring programs meeting EPA voluntary program policies.

Specific examples of improved monitoring we outlined included: (1) Conducting the currently required monitoring more frequently (i.e., increased monitoring frequency), (2) changing the monitoring technique to a parameter more closely related to control of direct or precursor $PM_{2.5}$ emissions (i.e., a correlated parametric monitoring technique), (3) changing the technique to more measurement of direct $PM_{2.5}$ emissions and $PM_{2.5}$ precursors, or (4) a combination of these improvements. These types of monitoring improvements could be conducted for both controlled and uncontrolled emissions units. The improved monitoring control measure would require facilities to pay more attention to the operation of add-on air pollution control devices, work practices, and other control measure activities. The additional attention will reduce periods during which control devices and other control measures do not operate as intended or required. The result would be increased emissions reductions from implementing existing and new rules.

We discussed a range of currently applied and new monitoring technologies. We addressed concerns we have about the limitations of the widespread use of visual emissions (VE) monitoring techniques, such as visible emissions checks, to show compliance with PM emissions limits. We noted particular concerns about VE approaches, even with frequent application, having the ability to verify compliance when the margin of compliance is small or the ability to detect relatively significant changes in emissions control performance. The other concern we noted about the use of VE tools is the limited frequency at which they are conducted. We cited studies on the availability of continuous instrumental methods for monitoring opacity and operational parameters closely related to PM control levels including the development of repeatable correlations between parameter levels and PM emissions. We noted that PM continuous emissions monitoring systems (PM CEMS) technology provides the opportunity to quantify PM emissions levels (concentration or emissions rates). These additional data provide the source owner/operator with a level of information that can be useful for understanding and operating the process and the control measures in ways to minimize emissions, improve operating efficiencies, and reduce enforcement liabilities. Furthermore, we noted that this technology will provide the State with quantitative information on PM emissions which will help improve the inventories and to implement effective control strategies to meet the NAAQS.

We also discussed at some length what we believe constitutes improved monitoring and the potential for monitoring-related emissions reductions. We discussed a study of how these emissions reductions would be achieved by increasing the monitoring frequency or improving the monitoring of an add-on air pollution control device or other process activity above the level currently required in existing rules. The increased frequency or improved technique would allow owners or operators to achieve greater emissions reductions by identifying and responding more quickly to periods of ineffective control measure operation. States could use an improved monitoring control measure in regulations or through other means to reduce emissions levels and receive credits towards attainment. Specifically, we cited materials that indicate that source owners and operators who increase monitoring frequency could achieve emissions reductions up to 13 percent and those who improve the monitoring technique could achieve emissions reductions up to 15 percent. States with nonattainment areas in need of additional reductions to achieve compliance with the NAAQS could implement an improved monitoring measure and develop additional emissions reductions credits. We outlined several specific examples.

In order to inform our improved monitoring guidance development efforts, we used the 2005 proposal to solicit specific comments on (1) how potentially inadequate source monitoring in certain SIPs could be improved; (2) how improved $PM_{2.5}$ monitoring relates to title V monitoring; (3) whether instrumental techniques are more appropriate than visual emissions (VE) techniques for monitoring compliance with PM emissions limits; and (4) a basis for determining whether improved monitoring would be effective and under what conditions should be required. We also requested comment on the feasibility of monitoring of co-pollutant control measures and requested examples of improved monitoring for any applications.

b. Final Rule

We maintain that improved monitoring is critical to implementing the $PM_{2.5}$ direct and precursor emissions reductions programs. We also believe that improving monitoring both in terms of increasing data collection and analysis frequency and in measuring the pollutant of interest more directly will accomplish several important and advantageous outcomes. First, improved monitoring will improve verification of compliance and assurance of the intended emissions reductions. Second, improved monitoring can provide additional emissions reductions through quicker detection and correction of control measure problems. Third, improved monitoring can improve operating efficiencies that often result in cost savings to the facility exceeding the cost of the monitoring. We will continue to evaluate the effects of improved monitoring on emissions reductions and ways to quantify the benefits associated with improved monitoring.

We intend to move forward with developing and providing additional technical and informational materials regarding technologies constituting improved monitoring and for developing regulations with improved monitoring. These materials may also include guidance and tools for establishing emissions reductions credits and the economic benefits associated with improved monitoring. As noted in section L above, we also reaffirm our policy that effective regulations must include certain elements that define applicable emissions limitations, the testing and monitoring requirements, and compliance, reporting, and corrective action obligations.

c. Comments and Responses

We expected to receive practical advice concerning improved $PM_{2.5}$ source emissions monitoring methods and field-tested examples. Instead, commenters focused on (1) critiquing PM CEMS technology (2) insisting that improving monitoring changes stringency of existing rules and requires rulemaking, and (3) critiquing the theoretical study linking emissions reductions with improved monitoring.

1. Currently Available PM CEMS for Monitoring Direct $PM_{2.5}$ Emissions

Comment: Commenters noted that because currently available PM CEMS measure filterable PM at stack conditions or at other elevated temperatures, the instruments do not measure the condensable portion of $PM_{2.5}$.

Response: We agree with this comment relative to PM CEMS in use to date and the ability to detect condensable PM. PM CEMS as applied today can be calibrated to measure filterable $PM_{2.5}$ emissions with very good sensitivity and repeatability. Note

that we are aware of a number of PM CEMS vendors developing devices relying on much the same technology but modified to measure condensable PM. Further, we are aware of at least one manufacturer offering a PM CEMS applicable to stationary sources that also complies with ASTM requirements for mobile source emissions monitoring. We also believe that monitoring for filterable $PM_{2.5}$ will be as important in some cases as monitoring for condensable PM and that PM CEMS in use today are markedly better at monitoring PM emissions than other frequently used monitoring approaches.

We realize that PM CEMS represent just one of a range of monitoring options that constitute improvements over the current monitoring. For instance, we believe that improved monitoring would include replacing current periodic VE measurements or daily recording of pressure drop of fabric filters with continuous bag leak detectors. We know of projects (e.g., ASTM committee work) for continuing the development of optical, as well as electromagnetic, monitoring tools to increase sensitivity and cost-effectiveness. Such monitoring would increase monitoring frequency and would yield data much more closely related to and more sensitive to control device operation than most currently applied monitoring. To the extent that condensable PM control is critical in implementing a regulation, we believe that monitoring must address that need. We will continue to collect and also provide information on source monitoring approaches that are improvements over current methods in both frequency and representativeness relative to implementing $PM_{2.5}$ emissions control strategies.

2. Status of Guidance Relative to Regulations

Comment: A significant majority of commenters suggested that improving monitoring in an existing regulation increases its stringency and requires notice and comment rulemaking, not guidance. Just one commenter suggested guidance could be developed and used.

Response: There are two aspects to the comments on this issue. One is whether improved monitoring would change source operations. We agree with the commenters that increasing the frequency of data collection or providing data more directly related to the pollutant of concern with improved monitoring could result in changes in how a facility is operated relative to compliance. We disagree with commenters that such changes in process operation resulting from improved monitoring constitute an increase in a regulation's stringency with respect to compliance. First, as mentioned in the preamble to the Credible Evidence rule (62 FR 8326, February 24, 1997), an emissions standard's required stringency is unaffected by the frequency of monitoring given no decrease in averaging time or emissions limitation. Secondly, data from improved monitoring will provide a facility operator better information on control measure performance more quickly and allow for reducing the duration and the number of periods that may lead to compliance problems. Reducing the duration of excess emissions periods, for example, with improved monitoring is not an increase in regulatory stringency but a decrease in enforcement liability.

The second aspect to the comment is questioning whether we can issue technical information about improved monitoring as guidance without applying it to a **Federal Register** notice and comment process. We disagree with commenters who believe that our developing and disseminating technical resource information is limited to notice and comment rulemaking. We note that making technical and other information materials available to the public, states, and industry is an important Agency function. There are many examples of the Agency dispensing such information including the Monitoring Knowledge Base (*http://cfpub.epa.gov/mkb/*) that provides just such information on improved monitoring. On the other hand, we agree with commenters that any significant change to an existing regulation, including the addition of new monitoring requirements, would be subject to notice and comment rulemaking. To the extent that States determine the need for changing existing or developing new regulations, public notice and comment rulemaking is appropriate. Our role in developing technical resources and information informing the states in developing those revised or new regulations does not require, nor should be subject to the rulemaking process. In that light, we recognize the value in obtaining and responding to public comments and suggestions on informative technical materials. Further, we believe rulemaking is not necessarily required for source owners or operators who volunteer to participate in an optional improved monitoring program, such as the one mentioned in the proposal. That program seeks to provide SIP credits to States where source owners or operators agree to improve their PM monitoring approaches. We plan on continuing to prepare and offer non-regulatory incentives for source owners and operators who volunteer to improve existing monitoring.

3. Study of Improved Monitoring-Induced Emissions Reductions

Comment: Commenters recommended that the proposal's theoretical study showing PM emissions reductions from the use of improved monitoring needs to be validated with field data.

Response: We agree with commenters that one should base any costs and benefits findings as well as validating the approach on available data. To the extent that this applies to assessing the benefits of emissions reductions achieved through improved monitoring, we requested that commenters provide data or leads to other information or to other alternatives that show how improved monitoring yields emissions reductions and ways to quantify possible PM credits for SIPs. In fact, we are disappointed that commenters failed to provide these data or examples of other approaches. As resources allow, we will investigate opportunities for field validation of the theoretical study, as well as other means to offer incentives for use of improved monitoring.

N. Guidance Specific to Tribes

a. Background

The proposal set forth guidance for Tribes regarding various aspects of air quality management, and this guidance remains largely the same as described in the section below.

b. Final Rule

The 1998 Tribal Authority Rule (TAR) (40 CFR part 49), which implements section 301(d) of the CAA, gives Tribes the option of developing tribal implementation plans (TIPs). Specifically, the TAR provides for the Tribes to be treated in the same manner as a State in implementing sections of the CAA. However, Tribes are not required to develop implementation plans. The EPA determined in the TAR that it was inappropriate to treat Tribes in a manner similar to a State with regard to specific plan submittal and implementation deadlines for NAAQS-related requirements, including, but not limited to, such deadlines in CAA sections 110(a)(1), 172(a)(2), 182, 187, and 191. (Add footnote) See 40 CFR 49.4(a). In addition, EPA determined it was not appropriate to treat tribes similarly to states with respect to provisions of the CAA requiring as a condition of program approval the demonstration of criminal enforcement

authority or providing for the delegation of such criminal enforcement authority. See 40 CFR 49.4(g). To the extent a tribe is precluded from asserting criminal enforcement authority, the Federal government will exercise primary criminal enforcement responsibility. See 40 CFR 49.8. In such circumstances, tribes seeking approval for CAA programs provide potential investigative leads to an appropriate federal enforcement agency. (end footnote)

If a Tribe elects to do a TIP, we will work with the Tribe to develop an appropriate schedule which meets the needs of the Tribe, and which does not interfere with the attainment of the NAAQS in other jurisdictions. The Tribe developing a TIP can work with the EPA Regional Office on the appropriateness of addressing RFP and other substantive SIP requirements that may or may not be appropriate for the Tribe's situation.

The TAR indicates that EPA is ultimately responsible for implementing CAA programs in Indian country, as necessary and appropriate, if Tribes choose not to implement those provisions. For example, an unhealthy air quality situation in Indian country may require EPA to develop a FIP to reduce emissions from sources on the reservation. In such a situation, EPA, in consultation with the Tribe and in consideration of their needs, would work to ensure that the NAAQS are met as expeditiously as practicable. Likewise, if we determine that sources in Indian country could interfere with a larger nonattainment area meeting the NAAQS by its attainment date, we would develop a FIP for those sources in consultation with the Tribe, as necessary or appropriate.

The TAR also provides flexibility for the Tribe in the preparation of a TIP to address the NAAQS. If a Tribe elects to develop a TIP, the TAR offers flexibility to Tribes to identify and implement on a Tribe-by-Tribe, case-by-case basis only those CAA programs or program elements needed to address their specific air quality problems. In the proposed Tribal rule, we described this flexible implementation approach as a modular approach. Each Tribe may evaluate the particular activities, including potential sources of air pollution within the exterior boundaries of its reservation (or within non-reservation areas for which it has demonstrated jurisdiction), which cause or contribute to its air pollution problem. A Tribe may adopt measures for controlling those sources of $PM_{2.5}$-related emissions, as long as the elements of the TIP are reasonably severable from the package of elements that can be included in a whole TIP. A TIP must include regulations designed to solve specific air quality problems for which the Tribe is seeking EPA approval, as well as a demonstration that the Tribal air agency has the authority from the Tribal government to develop and run their program, the capability to enforce their rules, and the resources to implement the program they adopt. In addition, the Tribe must receive an eligibility determination from EPA to be treated in the same manner as a State and to receive authorization from EPA to run a CAA program.

The EPA would review and approve, where appropriate, these partial TIPs as one step of an overall air quality plan to attain the NAAQS. A Tribe may step in later to add other elements to the plan, or EPA may step in to fill gaps in the air quality plan as necessary or appropriate. In approving a TIP, we would evaluate whether the plan interferes with the overall air quality plan for an area when Tribal lands are part of a multi-jurisdictional area. Because many of the nonattainment areas will include multiple jurisdictions, and in some cases both Tribal and State jurisdictions, it is important for the Tribes and the States to work together to coordinate their planning efforts. States need to incorporate Tribal emissions in their base emission inventories if Indian country is part of an attainment or nonattainment area. Tribes and States need to coordinate their planning activities as appropriate to ensure that neither is adversely affecting attainment of the NAAQS in the area as a whole.

c. Comments and Responses

No public comments were received on this section.

O. Enforcement and Compliance

a. Background

The proposed rule included a discussion of the specific requirements that must be addressed in order for SIP regulations to be enforceable.

b. Final Rule

The final rule includes similar guidance on enforceable SIP regulations, with some additional discussion about specific elements that must be addressed regarding compliance testing and compliance monitoring. (Note that enforceable SIP regulations may address these key elements in different ways depending on the type of source category being regulated.)

In general, for a SIP regulation to be enforceable, it must clearly spell out which sources or source types are subject to its requirements and what its requirements (e.g., emission limits, work practices, etc.) are. The regulation also needs to specify the time frames within which these requirements must be met, and must definitively state recordkeeping and monitoring requirements appropriate to the type of sources being regulated. The recordkeeping and monitoring requirements must be sufficient to enable the State or EPA to determine whether the source is complying with the emission limit on a continuous basis. An enforceable regulation must also contain test procedures in order to determine whether sources are in compliance.

Complete and effective regulations that ensure compliance with an applicable emissions limit must include requirements for both performance testing of emissions and ongoing monitoring of the compliance performance of control measures. SIP regulations must include the following critical elements of regulatory compliance testing:

- Indicator(s) of compliance—the pollutant or pollutants of interest (e.g., filterable $PM_{2.5}$ plus condensable $PM_{2.5}$) and the applicable measurable units for expressing compliance (e.g., ng/J of heat input, lb/hr);
- Test method—reference to a specific EPA or other published set of sample collection and analytical procedures, equipment design and performance criteria, and the calculations providing data in units of the indicator of compliance (see section II.L. below for descriptions of available and potential improved test methods);
- Averaging time—the minimum length of each required test run and the requirement to average the results of the test runs (e.g., three runs) representing a specified period of time (e.g., 8 hours); and
- Frequency—the maximum time between conduct of emissions or performance tests (e.g., within 30 days of facility start-up and once each successive quarter, every 6-month period, yearly).

In order to be complete with regard to compliance monitoring provisions, SIP regulations must include the following critical elements:

- Indicator(s) of performance—the parameter or parameters measured or observed for demonstrating proper operation of the pollution control measures or compliance with the applicable emissions limitation or standard. Indicators of performance may include direct or predicted emissions measurements, process or control device (and capture system) operational

parametric values that correspond to compliance with efficiency or emissions limits, and recorded findings of verification of work practice activities, raw material or fuels pollutant content, or design characteristics. Indicators may be expressed as a single maximum or minimum value, a function of process variables (e.g., within a range of pressure drops), a particular operational or work practice status (e.g., a damper position, completion of a waste recovery task), raw material or fuel pollutant content, or an interdependency between two or more variables;

• Measurement technique—the means used to gather and record information of or about the indicators of performance. The components of the measurement technique include the detector type or analytical method, location and installation specifications, inspection procedures, and quality assurance and quality control measures. Examples of measurement approaches include continuous emissions monitoring systems, continuous opacity monitoring systems, continuous parametric monitoring systems, performance testing, vendor or laboratory analytical data, and manual inspections and data collection that include making records of process conditions, raw materials or fuel specifications, or work practices;

• Monitoring frequency—the number of times to obtain and record monitoring data over a specified time interval. Examples of monitoring frequencies include at least one data value every 15 minutes for continuous emissions or parametric monitoring systems, at least every 10 seconds for continuous opacity monitoring systems, upon receipt or application of raw materials or fuel to the process, and at least once per operating day (or week, month, etc.) for performance testing, work practice verification, or equipment design inspections; and

• Averaging time—the period over which to average and use data to verify compliance with the emissions limitation or standard or proper operation of the pollution control measure. Examples of averaging time include a 3-hour average in units of the emissions limitation, a 30-day rolling average emissions value, a daily average of a control device operational parametric range, periodic (e.g., monthly, annual) average of raw materials or fuel pollutant content, and an instantaneous alarm.

These regulatory elements are essential for effective implementation of the rules and clear and enforceable applicable requirements. We believe that approval of regulations implementing the SIPs must ensure that these critical elements are present and clearly defined to be approvable. We reiterate that the compliance obligations, including emissions limits and other applicable requirements, must be representative of and accountable to the assumptions used in the SIP demonstration. This accountability includes the ability to transfer the applicable regulatory requirements to an operating permit subject to EPA and public review.

Under the Title V regulations, sources have an obligation to include in their Title V permit applications all emissions for which the source is major and all emissions of regulated air pollutants. The definition of regulated air pollutant in 40 CFR 70.2 includes any pollutant for which a NAAQS has been promulgated, which would include both PM_{10} and $PM_{2.5}$. To date, some permitted entities have been using PM_{10} emissions as a surrogate for $PM_{2.5}$ emissions. Upon promulgation of this rule, EPA will no longer accept the use of PM_{10} as a surrogate for $PM_{2.5}$. Thus, sources will be required to include their $PM_{2.5}$ emissions in their Title V permit applications, in any corrections or supplements to these applications, and in applications submitted upon modification and renewal.[52] The degree of quantification of $PM_{2.5}$ emissions required will depend on the types of determinations that a permitting authority needs to address for a particular source, the requirements of title V, and the informational needs and requirements of the particular State in question. Sources must continue to describe their PM_{10} emissions in their applications as indicated above because the original PM_{10} NAAQS remains in effect.

c. Comments and Responses

Comment: One commenter disagreed with language in the preamble to the proposal regarding Title V permitting requirements and the requirement to include various emissions information in title V permit applications. As described in 40 CFR 70.5(c)(3)(i) and 71.5(c)(3)(i), sources are required to include in their permit applications all emissions for which the source is major and all emissions of regulated air pollutants. In the preamble to the proposal, the EPA stated that in the past some permitted entities have been using PM_{10} emissions as a surrogate for $PM_{2.5}$ emissions in permit applications, or in corrections or supplements to applications. The EPA stated that upon promulgation of this rule, the EPA will no longer accept the use of PM_{10} as a surrogate for $PM_{2.5}$.

The commenter disagreed with language in the proposal stating that sources would be required to detail or quantify $PM_{2.5}$ emissions in permit applications, or in corrections or supplements to applications. The commenter asserts that the inclusion of $PM_{2.5}$ emissions information is required in a Title V permit application only if there is an applicable requirement in existence for which the source's applicability is in question and cited to various examples from the memorandum entitled ''White Paper for Streamlined Development of Part 70 Permit Applications,'' from Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards, to Air Division Directors, Regions I–X, dated July 10, 1995.

Response: The commenter is concerned that as a result of this rule all applications (including initial, modification, and renewal applications) will need to include a quantification of $PM_{2.5}$ emissions, and that a State will request that every source supplement or correct any existing title V application in order to provide an estimation of $PM_{2.5}$ emissions at the source.

The EPA is not implying that this is the case. The degree of quantification of $PM_{2.5}$ emissions required in an application (including an initial, modification, or renewal application), or in a correction or supplement to an existing application, depends on the types of determinations that a permitting authority needs to address for a particular source, the requirements of title V, and the informational needs and requirements of the particular State in question. For example, if a source which emits $PM_{2.5}$ emissions has submitted a title V application, but a draft permit has not yet been issued, then the source is required to submit information relative to the quantification of its $PM_{2.5}$ emissions if such information is needed or requested and it has not previously submitted such information. See 40 CFR 70.5(b) and 71.5(b).

Circumstances necessitating the quantification of $PM_{2.5}$ emissions and the submittal of this information include: (1) Determining all of the pollutants for which a source is major; (2) determining whether an applicable requirement or program applies, e.g., determining the applicability of a SIP requirement or a PSD or nonattainment NSR program, etc.; or (3) determining what fees a source owes a permitting

[52] See 40 CFR 70.5(c)(3)(i), 70.5(b), and 70.7(a)(1)(i); 40 CFR 71.5(c)(3)(i), 71.5(b), and 71.7(a)(1)(i).

authority as a result of considering $PM_{2.5}$ emissions.

In all circumstances, however, a State may require that a source quantify its $PM_{2.5}$ emissions information in an application, supplement, or correction, even if it is not needed for the particular determination at issue. The State, for example, may choose to obtain this information for air quality planning purposes, developing emission inventories, or for other purposes related to its air quality management goals. Requesting such emissions information is an option for any title V permitting authority.

The ''White Paper for Streamlined Development of Part 70 Permit Applications,'' referenced by the commenter, was a confirmation of EPA policy with respect to the fact that the specificity of emissions quantification can vary significantly, depending on the circumstances of a particular source. It is also important to note that this guidance document is a statement regarding the range of discretion available to permitting authorities in implementing the emissions quantification requirement, not a restriction of that discretion to minimum practices. Thus, States can implement this guidance document at their option, either in part or in its entirety.

In summary, the purpose of the statements made in the preamble to the proposal was to notify sources that as of the promulgation of this final rule, the EPA will no longer accept the use of PM_{10} emissions information as a surrogate for $PM_{2.5}$ emissions information [53] given that both pollutants are regulated by a National Ambient Air Quality Standard and therefore are considered regulated air pollutants. See the definition of regulated air pollutant in 40 CFR 70.2 and 71.2.[54] The degree of quantification of $PM_{2.5}$ emissions now required in an application (including an initial, modification, or renewal application), or provided in a correction or supplement to an existing application, will depend on the types of determinations that a permitting authority needs to address for a particular source, the requirements of title V, and the informational needs and requirements of the particular State in question.

P. Emergency Episodes

a. Background

In the proposal, we noted that subpart H of 40 CFR part 51 specifies requirements for SIPs to address emergency air pollution episodes and for preventing air pollutant levels from reaching levels determined to cause significant harm to the health of persons. We noted that we anticipate proposing a separate rulemaking in the future to update portions of that rule. The preamble to the proposal

b. Final Rule

We have not yet proposed any rule revision related to emergency episodes.

c. Comments and Responses

We received no comments on this section of the proposal.

Q. Ambient Monitoring

a. Background

Ambient air quality monitoring for $PM_{2.5}$ plays an important role in identifying areas violating the NAAQS, control strategy development, and tracking progress to attainment. We indicated in the proposal that States are required to monitor $PM_{2.5}$ mass concentrations using Federal Reference Method devices to determine compliance with the NAAQS.[55] We did not propose any revisions to current ambient monitoring requirements listed in 40 CFR part 58. Currently, there are more than 1200 FRM monitors located across the country. States will need to maintain monitors in designated nonattainment areas in order to track progress toward attainment and ultimately determine whether the area has attained the $PM_{2.5}$ standards.

In addition to the FRM network, EPA and the States have also deployed more than 250 speciation monitoring sites around the country to sample for chemical composition of $PM_{2.5}$. The data provided from these speciation monitors are invaluable in identifying contributing source categories and developing control strategies to reach attainment. Source apportionment and other receptor modeling techniques rely on the detailed data on species, ions, and other compounds obtained from chemical analysis. Analyses of rural versus urban sites to identify which $PM_{2.5}$ components comprise the ''urban excess'' (urban minus rural levels) portion of $PM_{2.5}$ mass also rely on data from speciation monitors. The EPA encourages states to expand their data analysis efforts using the wealth of information provided from the speciation monitoring network.

b. Final Rule

There is no change from the proposal. We are not promulgating any additional monitoring requirements as part of this rulemaking. Revised monitoring regulations were issued in 2006 along with the revised PM NAAQS.

c. Comments and Responses

There were no comments on this section.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under section 3(f)(1) of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is an ''economically significant regulatory action.'' Implementation of the $PM_{2.5}$ NAAQS is likely to have an annual effect on the economy of $100 million or more. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action. For clarity, we note that the estimated costs and benefits of implementing the 1997 $PM_{2.5}$ NAAQS are not created by this rule, because the Clean Air Act requires state implementation of the 1997 $PM_{2.5}$ standards (through state development of plans with enforceable requirements for sources) on a statutory timetable regardless of whether EPA issues this rule interpreting the statutory requirements. The rule reflects the statutory requirements.

As part of the ''Regulatory Impact Analysis for Particulate Matter National Ambient Air Quality Standards (September 2006),'' EPA prepared an assessment of the estimated costs and benefits associated with attaining the 1997 $PM_{2.5}$ NAAQS in 2015, incremental to currently promulgated federal and state programs including for example the Clean Air Interstate Rule, the Nonroad Diesel Rule, and other programs. This analysis is included as Appendix A of the report and is available in the docket for this action and on EPA's Web site at: *http://www.epa.gov/ttn/ecas/regdata/RIAs/Appendix%20A—2015%20Analysis.pdf.* This illustrative

[53] For background information on issues surrounding implementation of the $PM_{2.5}$ NAAQS, see the EPA memo entitled ''Implementation of New Source Review Requirements in $PM_{2.5}$ Nonattainment Areas,'' from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Directors, Regions I–X, dated April 5, 2005.

[54] For background information on regulated air pollutants, see the EPA memo entitled ''Definition of Regulated Air Pollutant for Purposes of Title V,'' from Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards, to Air Division Directors, Regions I–X, dated April 26, 1993.

[55] The $PM_{2.5}$ monitoring regulations are located at 40 CFR part 58.

analysis finds that the estimated monetized benefits of attaining the 1997 standards in 2015 are between $43 billion and $97 billion annually, and the estimated monetized costs are $6.7 billion annually. The RIA states: ''Note that because this analysis was intended to compare costs and benefits of attaining alternative standards by fixed dates, it did not attempt to identify for each designated $PM_{2.5}$ area measures that may be needed to meet subpart 1 Clean Air Act requirements, such as reasonably available measures and attainment as expeditiously as practicable. It is expected that additional costs and benefits will begin to accrue in earlier years as states comply with these requirements.'' (RIA, p. 1–4)

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* In a separate **Federal Register** notice published today, EPA is requesting comment on the information collection requirements of this rule. The information collection requirements are not enforceable until OMB approves them.

The data collected from the State or local air agency respondents will include the required SIP elements prescribed in CAA sections 110 and part D, subpart 1 of title I for Implementation plans and the requirements in this Implementation Rule (40 CFR 51.1000–51.1012). The $PM_{2.5}$ SIP will contain rules and other requirements designed to achieve the NAAQS by the deadlines established under the CAA, and it also contains a demonstration that the State's requirements will in fact result in attainment. The SIP must meet the requirements in subpart 1 to adopt RACM, RACT, and provide for RFP toward attainment for the period prior to the area's attainment date.

The Agency anticipates additional administrative burden during the 3 year period of the ICR for State governments and the Agency of 630,000 hours and 69,300 hours, respectively. Fifty percent of the hours are expended in the first year with the remainder evenly divided between the second and third years of the ICR period. Tribes are not required to conduct attainment demonstrations or submit the RFP, RACT, or RACM requirements.

The present value of the total additional costs for State government respondents is estimated at $33.4 million for the 3 year period. On an equivalent annual basis that is $12.7 million per year during the 3 year period of the ICR. The present value of the Agency administrative cost burden is estimated at $3.7 million dollars for the 3 year period. This is equivalent to an equal annual stream of costs of $1.4 million per year during the three year period. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this final action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities and it is not necessary to prepare a regulatory flexibility analysis in conjunction with this final rule. The final rule governing SIPs will not directly impose any requirements on small entities. Rather, this rule interprets the obligations established in the CAA for States to submit implementation plans in order to attain the $PM_{2.5}$ NAAQS.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, EPA is required by section 205 of the UMRA to identify and consider a reasonable number of regulatory alternatives, and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandate that may result in expenditures

of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. The estimated administrative burden hours and costs associated with implementing the $PM_{2.5}$ NAAQS are estimated in the ICR for this rule. The estimated costs presented there for States totals $33.4 million for a three-year period. Thus, this rule is not subject to the requirements of section 202 and 205 of the UMRA. The EPA consulted with governmental entities affected by this rule and has determined that this rule contains no regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments.

The CAA imposes the obligation for States to submit SIPs to implement the $PM_{2.5}$ NAAQS. In this rule, EPA is merely providing an interpretation of those requirements. However, even if this rule did establish an independent requirement for States to submit SIPs, it is questionable whether a requirement to submit a SIP revision would constitute a Federal mandate in any case. The obligation for a State to submit a SIP that arises out of section 110 and section 172 (part D) of the CAA is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have Federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

At the time of proposal, EPA concluded that the proposed rule would not have any federalism implications. The EPA stated that the proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This rule clarifies the statutory obligations of States in implementing the $PM_{2.5}$ NAAQS. However, EPA recognized that States would have a substantial interest in this rule and any corresponding revisions to associated SIP requirements.

Therefore, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA held a number of calls with representatives of State and local air pollution control agencies and hosted a public hearing in Washington, DC in November 2005. The EPA considered the comments from State and local governments in developing the final rule.

EPA concludes that this final rule does not have federalism implications, for the reasons proposed. The final rule will not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. As noted above in section D on UMRA, this rule does not impose significant costs on State and local governments. (EPA estimates the costs to States to implement the $PM_{2.5}$ NAAQS to be $33.4 million.) Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' This final rule does not have ''Tribal implications'' as defined in Executive Order 13175. This rule concerns the requirements for State and tribal implementation plans for attaining the $PM_{2.5}$ air quality standards. The CAA provides for States to develop plans to regulate emissions of air pollutants within their jurisdictions. The Tribal Air Rule (TAR) under the CAA gives Tribes the opportunity to develop and implement CAA programs such as programs to attain and maintain the $PM_{2.5}$ NAAQS, but it leaves to the discretion of the Tribe the decision of whether to develop these programs and which programs, or appropriate elements of a program, they will adopt.

Although Executive Order 13175 does not apply to this rule, EPA did reach out to Tribal leaders and environmental staff in developing this rule. From 2001–2004, the EPA supported a National Designations Workgroup to provide a forum for tribal professionals to give input to the designations process. In 2006, EPA supported a national ''Tribal Air call'' which provides an open forum for all Tribes to voice concerns to EPA about the NAAQS implementation process, including the $PM_{2.5}$ NAAQS. In these meetings, EPA briefed call participants and Tribal environmental professionals gave input as the rule was under development. Furthermore, in December 2005, EPA sent individualized letters to all federally recognized Tribes about the proposal to give Tribal leaders the opportunity for consultation.

This final rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a CAA program to attain the $PM_{2.5}$ NAAQS at this time. The EPA notes that even if a Tribe were implementing such a plan at this time, while the rule might have Tribal implications with respect to that Tribe, it would not impose substantial direct costs upon it, nor would it preempt Tribal law.

Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. As this rule does not have Tribal implications, Executive Order 13175 does not apply.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EO 13045, ''Protection of Children from Environmental Health and Safety Risks,'' (62 FR 19885, April 23, 1997) applies to any rule that (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final

rule is subject to EO 13045 because it is economically significant as defined in EO 12866, and we believe that the environmental health risk addressed by this action may have a disproportionate effect on children. This rule implements a previously promulgated health-based Federal standard—the $PM_{2.5}$ NAAQS [56]. The NAAQS constitute uniform, national standards for PM pollution; these standards are designed to protect public health with an adequate margin of safety, as required by CAA section 109. However, the protection offered by these standards may be especially important for children because children, along with other sensitive population subgroups such as the elderly and people with existing heart or lung disease, are potentially susceptible to health effects resulting from PM exposure. Because children are considered a potentially susceptible population, we have carefully evaluated the environmental health effects of exposure to PM pollution among children. These effects and the size of the population affected are summarized in section 9.2.4 of the Criteria Document and section 3.5 of the Staff Paper.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule is not a ''significant energy action,'' because it does not establish requirements that directly affect the general public and the public and private sectors, but, rather, interprets the statutory requirements that apply to States in preparing their SIPs. The SIPs themselves will likely establish requirements that directly affect the general public, and the public and private sectors.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This final rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any VCS. The EPA will encourage the States and Tribes to consider the use of such standards, where appropriate, in the development of their implementation plans.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EO 12898 (59 FR 7629 (Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA has determined that the final rule should not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The health and environmental risks associated with fine particles were considered in the establishment of the $PM_{2.5}$ NAAQS. The level is designed to be protective with an adequate margin of safety. This final rule provides a framework for improving environmental quality and reducing health risks for areas that may be designated nonattainment.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective June 25, 2007.

L. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by June 25, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See Act section 307(b)(2).

M. Judicial Review

Under sections 307(d)(1)(E) and 307(d)(1)(V) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to ''such other actions as the Administrator may determine.'' While the Administrator did not make this determination earlier, the Administrator believes that all of the procedural requirements, e.g., docketing, hearing and comment periods, of section 307(d) have been complied with during the course of this rulemaking.

IV. Statutory Authority

The statutory authority for this action is provided by 42 U.S.C. 7401, 7408, 7410, 7501–7509a, and 7601(a)(1). This notice is also subject to 307(d) of the CAA (42 U.S.C. 7407(d)).

List of Subjects in 40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Transportation, Volatile organic compound.

Dated: March 29, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code

[56] *See* 62 FR 38652–38760, National Ambient Air Quality Standards for Particulate Matter, Final Rule; also 40 CFR part 50.

of Federal Regulations is amended as follows:

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. A new Subpart Z is added to read as follows:

Subpart Z—Provisions for Implementation of $PM_{2.5}$ National Ambient Air Quality Standards

Sec.

§ 51.1000 Definitions.

The following definitions apply for purposes of this subpart. Any term not defined herein shall have the meaning as defined in 40 CFR 51.100.

Act means the Clean Air Act as codified at 42 U.S.C. 7401–7671q. (2003).

Attainment date means the date by which an area, under an approved State implementation plan, is required to attain the $PM_{2.5}$ NAAQS (based on the average of three consecutive years of ambient air quality data).

Baseline year inventory for the RFP plan is the emissions inventory for the year also used as the base year for the attainment demonstration.

Benchmark RFP plan means the reasonable further progress plan that requires generally linear emission reductions in pollutants from the baseline emissions year through the milestone inventory year.

Date of designation means the effective date of the $PM_{2.5}$ area designation as promulgated by the Administrator.

Direct $PM_{2.5}$ emissions means solid particles emitted directly from an air emissions source or activity, or gaseous emissions or liquid droplets from an air emissions source or activity which condense to form particulate matter at ambient temperatures. Direct $PM_{2.5}$ emissions include elemental carbon, directly emitted organic carbon, directly emitted sulfate, directly emitted nitrate, and other inorganic particles (including but not limited to crustal material, metals, and sea salt).

Existing control measure means any Federally enforceable national, State, or local control measure that has been approved in the SIP and that results in reductions in emissions of $PM_{2.5}$ or $PM_{2.5}$ precursors in a nonattainment area.

Full implementation inventory is the projected RFP emission inventory for the year preceding the attainment date, representing a level of emissions that demonstrates attainment.

Milestone year inventory is the projected RFP emission inventory for the applicable RFP milestone year (*i.e.* 2009 and, where applicable, 2012).

$PM_{2.5}$ NAAQS means the particulate matter national ambient air quality standards (annual and 24-hour) codified at 40 CFR 50.7.

$PM_{2.5}$ design value for a nonattainment area is the highest of the three-year average concentrations calculated for the monitors in the area, in accordance with 40 CFR part 50, appendix N.

$PM_{2.5}$ attainment plan precursor means $S0_2$ and those other $PM_{2.5}$ precursors emitted by sources in the State which the State must evaluate for emission reduction measures to be included in its $PM_{2.5}$ nonattainment area or maintenance area plan.

$PM_{2.5}$ precursor means those air pollutants other than $PM_{2.5}$ direct emissions that contribute to the formation of $PM_{2.5}$. $PM_{2.5}$ precursors include $S0_2$, NO_X, volatile organic compounds, and ammonia.

Reasonable further progress (RFP) means the incremental emissions reductions toward attainment required under sections 172(c)(2) and 171(1).

Subpart 1 means the general attainment plan requirements found in subpart 1 of part D of title I of the Act.

§ 51.1001 Applicability of part 51.

The provisions in subparts A through X of this part apply to areas for purposes of the $PM_{2.5}$ NAAQS to the extent they are not inconsistent with the provisions of this subpart.

§ 51.1002 Submittal of State implementation plan.

(a) For any area designated by EPA as nonattainment for the $PM_{2.5}$ NAAQS, the State must submit a State implementation plan satisfying the requirements of section 172 of the Act and this subpart to EPA by the date prescribed by EPA which will be no later than 3 years from the date of designation.

(b) The State must submit a plan consistent with the requirements of section 110(a)(2) of the Act unless the State already has fulfilled this obligation for the purposes of implementing the $PM_{2.5}$ NAAQS.

(c) *Pollutants contributing to fine particle concentrations.* The State implementation plan must identify and evaluate sources of $PM_{2.5}$ direct emissions and $PM_{2.5}$ attainment plan precursors in accordance with §§ 51.1009 and 51.1010. After January 1, 2011, for purposes of establishing emissions limits under 51.1009 and 51.1010, States must establish such limits taking into consideration the condensable fraction of direct $PM_{2.5}$ emissions. Prior to this date, States are not prohibited from establishing source emission limits that include the condensable fraction of direct $PM_{2.5}$.

(1) The State must address sulfur dioxide as a $PM_{2.5}$ attainment plan precursor and evaluate sources of SO_2 emissions in the State for control measures.

(2) The State must address NO_X as a $PM_{2.5}$ attainment plan precursor and evaluate sources of NO_X emissions in the State for control measures, unless the State and EPA provide an appropriate technical demonstration for a specific area showing that NO_X emissions from sources in the State do not significantly contribute to $PM_{2.5}$ concentrations in the nonattainment area.

(3) The State is not required to address VOC as a $PM_{2.5}$ attainment plan precursor and evaluate sources of VOC emissions in the State for control measures, unless:

(i) the State provides an appropriate technical demonstration for a specific area showing that VOC emissions from sources in the State significantly contribute to $PM_{2.5}$ concentrations in the nonattainment area, and such demonstration is approved by EPA; or

(ii) The EPA provides such a technical demonstration.

(4) The State is not required to address ammonia as a $PM_{2.5}$ attainment plan precursor and evaluate sources of ammonia emissions from sources in the State for control measures, unless:

(i) The State provides an appropriate technical demonstration for a specific area showing that ammonia emissions from sources in the State significantly contribute to $PM_{2.5}$ concentrations in the

nonattainment area, and such demonstration is approved by EPA; or

(ii) The EPA provides such a technical demonstration.

(5) The State must submit a demonstration to reverse any presumption in this rule for a $PM_{2.5}$ precursor with respect to a particular nonattainment area, if the administrative record related to development of its SIP shows that the presumption is not technically justified for that area.

§ 51.1003 [Reserved]

§ 51.1004 Attainment dates.

(a) Consistent with section 172(a)(2)(A) of the Act, the attainment date for an area designated nonattainment for the $PM_{2.5}$ NAAQS will be the date by which attainment can be achieved as expeditiously as practicable, but no more than five years from the date of designation. The Administrator may extend the attainment date to the extent the Administrator determines appropriate, for a period no greater than 10 years from the date of designation, considering the severity of nonattainment and the availability and feasibility of pollution control measures.

(b) In the SIP submittal for each of its nonattainment areas, the State must submit an attainment demonstration justifying its proposed attainment date. For each nonattainment area, the Administrator will approve an attainment date at the same time the Administrator approves the attainment demonstration for the area, consistent with the attainment date timing provision of section 172(a)(2)(A) and paragraph (a) of this section.

(c) Upon a determination by EPA that an area designated nonattainment for the $PM_{2.5}$ NAAQS has attained the standard, the requirements for such area to submit attainment demonstrations and associated reasonably available control measures, reasonable further progress plans, contingency measures, and other planning SIPs related to attainment of the $PM_{2.5}$ NAAQS shall be suspended until such time as: the area is redesignated to attainment, at which time the requirements no longer apply; or EPA determines that the area has violated the $PM_{2.5}$ NAAQS, at which time the area is again required to submit such plans.

§ 51.1005 One-year extensions of the attainment date.

(a) Pursuant to section 172(a)(2)(C)(ii) of the Act, a State with an area that fails to attain the $PM_{2.5}$ NAAQS by its attainment date may apply for an initial 1-year attainment date extension if the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and:

(1) For an area that violates the annual $PM_{2.5}$ NAAQS as of its attainment date, the annual average concentration for the most recent year at each monitor is 15.0 $\mu g/m^3$ or less (calculated according to the data analysis requirements in 40 CFR part 50, appendix N).

(2) For an area that violates the 24-hour $PM_{2.5}$ NAAQS as of its attainment date, the 98th percentile concentration for the most recent year at each monitor is 65 $\mu g/m^3$ or less (calculated according to the data analysis requirements in 40 CFR part 50, appendix N).

(b) An area that fails to attain the $PM_{2.5}$ NAAQS after receiving a 1-year attainment date extension may apply for a second 1-year attainment date extension pursuant to section 172(a)(2)(C)(ii) if the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and:

(1) For an area that violates the annual $PM_{2.5}$ NAAQS as of its attainment date, the two-year average of annual average concentrations at each monitor, based on the first extension year and the previous year, is 15.0 $\mu g/m^3$ or less (calculated according to the data analysis requirements in 40 CFR part 50, appendix N).

(2) For an area that violates the 24-hour $PM_{2.5}$ NAAQS as of its attainment date, the two-year average of annual 98th percentile concentrations at each monitor, based on the first extension year and the previous year, is 65 $\mu g/m^3$ or less (calculated according to the data analysis requirements in 40 CFR part 50, appendix N).

§ 51.1006 Redesignation to nonattainment following initial designations for the $PM_{2.5}$ NAAQS.

Any area that is initially designated ''attainment/unclassifiable'' for the $PM_{2.5}$ NAAQS may be subsequently redesignated to nonattainment if ambient air quality data in future years indicate that such a redesignation is appropriate. For any such area that is redesignated to nonattainment for the $PM_{2.5}$ NAAQS, any absolute, fixed date that is applicable in connection with the requirements of this part is extended by a period of time equal to the length of time between the effective date of the initial designation for the $PM_{2.5}$ NAAQS and the effective date of redesignation, except as otherwise provided in this subpart.

§ 51.1007 Attainment demonstration and modeling requirements.

(a) For any area designated as nonattainment for the $PM_{2.5}$ NAAQS, the State must submit an attainment demonstration showing that the area will attain the annual and 24-hour standards as expeditiously as practicable. The demonstration must meet the requirements of § 51.112 and Appendix W of this part and must include inventory data, modeling results, and emission reduction analyses on which the State has based its projected attainment date. The attainment date justified by the demonstration must be consistent with the requirements of § 51.1004(a). The modeled strategies must be consistent with requirements in § 51.1009 for RFP and in § 51.1010 for RACT and RACM. The attainment demonstration and supporting air quality modeling should be consistent with EPA's $PM_{2.5}$ modeling guidance.

(b) *Required time frame for obtaining emissions reductions.* For each nonattainment area, the State implementation plan must provide for implementation of all control measures needed for attainment as expeditiously as practicable, but no later than the beginning of the year prior to the attainment date. Consistent with section 172(c)(1) of the Act, the plan must provide for implementation of all RACM and RACT as expeditiously as practicable. The plan also must include RFP milestones in accordance with § 51.1009, and control measures needed to meet these milestones, as necessary.

§ 51.1008 Emission inventory requirements for the $PM_{2.5}$ NAAQS.

(a) For purposes of meeting the emission inventory requirements of section 172(c)(3) of the Act for nonattainment areas, the State shall, no later than three years after designation:

(1) Submit to EPA Statewide emission inventories for direct $PM_{2.5}$ emissions and emissions of $PM_{2.5}$ precursors. For purposes of defining the data elements for these inventories, the $PM_{2.5}$ and $PM_{2.5}$ precursor-relevant data element requirements under subpart A of this part shall apply.

(2) Submit any additional emission inventory information needed to support an attainment demonstration and RFP plan ensuring expeditious attainment of the annual and 24-hour $PM_{2.5}$ standards.

(b) For inventories required for submission under paragraph (a) of this section, a baseline emission inventory is required for the attainment demonstration required under § 51.1007 and for meeting RFP requirements

under § 51.1009. As determined on the date of designation, the base year for this inventory shall be the most recent calendar year for which a complete inventory was required to be submitted to EPA pursuant to subpart A of this part. The baseline emission inventory for calendar year 2002 or other suitable year shall be used for attainment planning and RFP plans for areas initially designated nonattainment for the $PM_{2.5}$ NAAQS in 2004–2005.

§ 51.1009 Reasonable further progress (RFP) requirements.

(a) Consistent with section 172(c)(2) of the Act, State implementation plans for areas designated nonattainment for the $PM_{2.5}$ NAAQS must demonstrate reasonable further progress as provided in § 51.1009(b) through (h).

(b) If the State submits to EPA an attainment demonstration and State implementation plan for an area which demonstrates that it will attain the PM NAAQS within five years of the date of designation, the State is not required to submit a separate RFP plan. Compliance with the emission reduction measures in the attainment demonstration and State implementation plan will meet the requirements for achieving reasonable further progress for the area.

(c) For any area for which the State submits to EPA an approvable attainment demonstration and State implementation plan that demonstrates the area needs an attainment date of more than five years from the date of designation, the State also must submit an RFP plan. The RFP plan must describe the control measures that provide for meeting the reasonable further progress milestones for the area, the timing of implementation of those measures, and the expected reductions in emissions of direct $PM_{2.5}$ and $PM_{2.5}$ attainment plan precursors. The RFP plan is due to EPA within three years of the date of designation.

(1) For any State that submits to EPA an approvable attainment demonstration and State implementation plan justifying an attainment date of more than five and less than nine years from the date of designation, the RFP plan must include 2009 emissions milestones for direct $PM_{2.5}$ and $PM_{2.5}$ attainment plan precursors demonstrating that reasonable further progress will be achieved for the 2009 emissions year.

(2) For any area that submits to EPA an approvable attainment demonstration and State implementation plan justifying an attainment date of nine or ten years from the date of designation, the RFP plan must include 2009 and 2012 emissions milestones for direct $PM_{2.5}$ and $PM_{2.5}$ attainment plan precursors demonstrating that reasonable further progress will be achieved for the 2009 and 2012 emissions years.

(d) The RFP plan must demonstrate that in each applicable milestone year, emissions will be at a level consistent with generally linear progress in reducing emissions between the base year and the attainment year.

(e) For a multi-State nonattainment area, the RFP plans for each State represented in the nonattainment area must demonstrate RFP on the basis of common multi-State inventories. The States within which the area is located must provide a coordinated RFP plan. Each State in a multi-State nonattainment area must ensure that the sources within its boundaries comply with enforceable emission levels and other requirements that in combination with the reductions planned in other state(s) will provide for attainment as expeditiously as practicable and demonstrate reasonable further progress.

(f) In the benchmark RFP plan, the State must identify direct $PM_{2.5}$ emissions and $PM_{2.5}$ attainment plan precursors regulated under the $PM_{2.5}$ attainment plan and specify target emission reduction levels to be achieved during the milestone years. In developing the benchmark RFP plan, the State must develop emission inventory information for the geographic area included in the plan and conduct the following calculations:

(1) For direct $PM_{2.5}$ emissions and each $PM_{2.5}$ attainment plan precursor addressed in the attainment strategy, the full implementation reduction is calculated by subtracting the full implementation inventory from the baseline year inventory.

(2) The ''milestone date fraction'' is the ratio of the number of years from the baseline year to the milestone inventory year divided by the number of years from the baseline year to the full implementation year.

(3) For direct $PM_{2.5}$ emissions and each $PM_{2.5}$ attainment plan precursor addressed in the attainment strategy, a benchmark emission reduction is calculated by multiplying the full implementation reduction by the milestone date fraction.

(4) The benchmark emission level in the milestone year is calculated for direct $PM_{2.5}$ emissions and each $PM_{2.5}$ attainment plan precursor by subtracting the benchmark emission reduction from the baseline year emission level. The benchmark RFP plan is defined as a plan that achieves benchmark emission levels for direct $PM_{2.5}$ emissions and each $PM_{2.5}$ attainment plan precursor addressed in the attainment strategy for the area.

(5) In comparing inventories between baseline and future years for direct $PM_{2.5}$ emissions and each $PM_{2.5}$ attainment plan precursor, the inventories must be derived from the same geographic area. The plan must include emissions estimates for all types of emitting sources and activities in the geographic area from which the emission inventories for direct $PM_{2.5}$ emissions and each $PM_{2.5}$ attainment plan precursor addressed in the plan are derived.

(6) For purposes of establishing motor vehicle emissions budgets for transportation conformity purposes (as required in 40 CFR part 93) for a $PM_{2.5}$ nonattainment area, the State shall include in its RFP submittal an inventory of on-road mobile source emissions in the nonattainment area.

(g) The RFP plan due three years after designation must demonstrate that emissions for the milestone year are either:

(1) At levels that are roughly equivalent to the benchmark emission levels for direct $PM_{2.5}$ emissions and each $PM_{2.5}$ attainment plan precursor to be addressed in the plan; or

(2) At levels included in an alternative scenario that is projected to result in a generally equivalent improvement in air quality by the milestone year as would be achieved under the benchmark RFP plan.

(h) The equivalence of an alternative scenario to the corresponding benchmark plan must be determined by comparing the expected air quality changes of the two scenarios at the design value monitor location. This comparison must use the information developed for the attainment plan to assess the relationship between emissions reductions of the direct $PM_{2.5}$ emissions and each $PM_{2.5}$ attainment plan precursor addressed in the attainment strategy and the ambient air quality improvement for the associated ambient species.

§ 51.1010 Requirements for reasonably available control technology (RACT) and reasonably available control measures (RACM).

(a) For each $PM_{2.5}$ nonattainment area, the State shall submit with the attainment demonstration a SIP revision demonstrating that it has adopted all reasonably available control measures (including RACT for stationary sources) necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements. The SIP revision shall contain the list of the potential measures considered by the State, and

information and analysis sufficient to support the State's judgment that it has adopted all RACM, including RACT.

(b) In determining whether a particular emission reduction measure or set of measures must be adopted as RACM under section 172(c)(1) of the Act, the State must consider the cumulative impact of implementing the available measures. Potential measures that are reasonably available considering technical and economic feasibility must be adopted as RACM if, considered collectively, they would advance the attainment date by one year or more.

§ 51.1011 Requirements for mid-course review.

(a) Any State that submits to EPA an approvable attainment plan for a $PM_{2.5}$ nonattainment area justifying an attainment date of nine or ten years from the date of designation also must submit to EPA a mid-course review six years from the date of designation.

(b) The mid-course review for an area must include:

(1) A review of emissions reductions and progress made in implementing control measures to reduce emissions of direct $PM_{2.5}$ and $PM_{2.5}$ attainment plan precursors contributing to $PM_{2.5}$ concentrations in the area;

(2) An analysis of changes in ambient air quality data for the area;

(3) Revised air quality modeling analysis to demonstrate attainment;

(4) Any new or revised control measures adopted by the State, as necessary to ensure attainment by the attainment date in the approved SIP of the nonattainment area.

§ 51.1012 Requirement for contingency measures.

Consistent with section 172(c)(9) of the Act, the State must submit in each attainment plan specific contingency measures to be undertaken if the area fails to make reasonable further progress, or fails to attain the $PM_{2.5}$ NAAQS by its attainment date. The contingency measures must take effect without significant further action by the State or EPA.

[FR Doc. E7–6347 Filed 4–24–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0265; FRL–8295–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; $PM_{2.5}$ Ozone National Ambient Air Quality Standard Implementation Rule; EPA ICR No. 2258.01

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR covers the 3 year time period from April 5, 2008 through April 4, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 25, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0265, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epamail.epa.gov*.
- Fax: 202–566–1741
- Mail: Attention Docket ID No. EPA–HQ–OAR–2007–0265, U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, Northwest, Mailcode: 6102T, Washington, DC 20460.
- Hand Delivery: U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room 3334, Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2007–0265. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0265. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Butch Stackhouse, Air Quality Policy Division, Office of Air Quality Planning and Standards, Mail Code C539–01, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5208, facsimile number (919) 541–0824, electronic mail e-mail address: *stackhouse.butch@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

The EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2007–0265 established a public docket for each of the ICRs identified in this document (see the Docket ID. numbers for each ICR that are provided in the text, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Docket is 202–566–1752.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

[Docket ID No. EPA–HQ–OAR–2007–0265]

Affected entities: Entities potentially affected by this action are States and Regional offices. There are other entities

that may be indirectly affected, as they may comment on the draft submissions before they are forwarded to EPA's Regional Offices. These include potentially regulated entities, representatives of special interest groups, and individuals.

Title: $PM_{2.5}$ National Ambient Air Quality Standard Implementation Rule.

ICR numbers: EPA ICR No. 2258.01.

ICR status: This ICR covers the 3-year time period from April 5, 2008 through April 4, 2011. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Paperwork Reduction Act requires the information found in this Information Collection Request (ICR) number 2258.01, to assess the burden (in hours and dollars) of the $PM_{2.5}$ National Ambient Air Quality Standard Implementation (NAAQS) Rule as well as the periodic reporting and record keeping necessary to maintain the rule. The rule was proposed November 1, 2005 (70 FR 65983) and promulgated April 25, 2007 elsewhere in the Rules section of part II of this **Federal Register**. The preamble to the proposed and final regulation addressed the administrative burden in general terms. The preamble to the final rule stated that an ICR would be prepared. The rule includes requirements that involve collecting information from States with areas that have been designated nonattainment for the $PM_{2.5}$ NAAQS.

The time period covered in this ICR is a 3-year period from April 5, 2008 through April 4, 2011. The milestones for the State or local air agency respondents will include the required SIP elements prescribed in the Clean Air Act (CAA) sections 110 and part D, subpart 1 of title I for Implementation plans and the requirements in the $PM_{2.5}$ NAAQS Implementation Rule (40 CFR 51.1000–51.1012). The $PM_{2.5}$ SIP will contains rules and other requirements designed to achieve the NAAQS by the deadlines established under the CAA, and it also contains a demonstration that the State's requirements will in fact result in attainment. The SIP must meet the requirements in subpart 1 to adopt Reasonable Available Control Measures, Reasonable Available Control Technology, and provide for Reasonable Further Progress toward attainment for the period prior to the area's attainment date. However, not all of the milestones and associated burden and administrative cost estimates apply to every designated $PM_{2.5}$ nonattainment area. Areas with cleaner air quality have fewer requirements.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10,000 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 21.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 210,000 hours.

Estimated total average annual costs per respondent: $604,762. This includes an estimated burden cost of $604,762 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Additional Background on Burden Estimation Method

The methodology and draft estimates of incremental administrative burden for this ICR are documented in a separate supporting statement in the docket. The methodology and draft estimates in the $PM_{2.5}$ Implementation Rule ICR are based on the ICR developed for the 8-hour ozone Implementation Rule ICR (EPA ICR No. 2236.02, OMB Control No. 2060–0594). The 8-hour ozone Implementation Rule ICR methodology and draft estimates were submitted to EPA's Ozone National Ambient Air Quality Standards Implementation Workgroup for their review and comment. This workgroup is comprised of representatives from EPA Regional Offices I through IX as well as EPA's Offices of General Counsel, Policy-Economics-and Innovation, and Air and Radiation (including the Offices of Transportation and Air Quality, Air Quality Planning and Standards, and Policy Analysis and Review).

The workgroup provided constructive criticism on earlier drafts which resulted in clarifications to the methodology section, revisions to the categorization of non-attainment areas by regional office, and changes to the temporal allocation of regional office administrative burden. The workgroup reviewed the June 2006 ICR supporting statement which was forwarded to OMB's Office of Information and Regulatory Affairs. The workgroup believed there would be differences between the realized incremental administrative burden of the states and regional offices versus what was in the supporting statement. However, the estimates in the ICR supporting statement were judged to be appropriate (e.g. in the right ballpark).

What Is the Next Step in the Process for This ICR?

The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: March 29, 2007.

Mary Henigin,

Acting Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, Office of Air and Radiation.

[FR Doc. E7–6348 Filed 4–24–07; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday,
April 25, 2007

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 740, 746 and 750
Indian and Federal Lands; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 740, 746 and 750

RIN 1029–AC53

Indian and Federal Lands

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of decision not to adopt proposed rule.

SUMMARY: We, OSM, have decided not to adopt a proposed rule that would have revised the definition of ''Indian lands'' for purposes of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed rule also would have revised both the Federal lands program and the Indian lands program.

If adopted as proposed, the definition of Indian Lands would have included allotted lands located within an approved tribal land consolidation area but outside the boundaries of a reservation. Such allotments would then have been subject to OSM's regulatory authority under the Indian Lands Program. The only lands approved for coal mining that would have been brought within the scope of our jurisdiction if the proposed rule were adopted are 48 Navajo allotments overlying leased Federal coal within the existing McKinley Mine permit area in New Mexico. These allotments are currently regulated by the State.

We conclude that the record before us neither adequately supports nor clearly precludes a finding of supervision in fact or in law. Therefore, we conclude that off-reservation Navajo allotted lands may be supervised by the Navajo Nation and thus may be Indian lands; but that any determination as to supervision of specific off-reservation Navajo allotted lands is more properly made on a case-by-case basis.

In this notice of final action, we are setting out our analysis of the applicable law and the record before us. We are publishing this analysis for two reasons. First, we intend this analysis to inform the Navajo Nation and the Hopi Tribe and the public of the reasons for our decision not to adopt the proposed rule. Second, we intend this analysis to advise the public of how we anticipate addressing any pending or future actions concerning supervision of allotted lands.

DATES: This decision is effective April 25, 2007.

ADDRESSES: The administrative Record for this rulemaking is located at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Vermell Davis, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone (202) 208–2802. E-mail address: *gvdavis@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. What Amendments Did We Propose Concerning the Definition of Indian Lands? What Action Are We Now Taking on the Proposed Rule?

On February 19, 1999 we proposed a rule clarifying the definition of Indian lands for the purposes of SMCRA, at 30 CFR 700.5. As discussed in more detail below, the proposed rule would have amended the existing definition by including as Indian lands:

> ''All allotments held in trust by the Federal government for an individual Indian or Indians, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments, where such allotments are located within a tribal land consolidation area approved by the Secretary or his authorized representative under 25 U.S.C. 2203.''

In the February 19, 1999 notice of proposed rulemaking, we also proposed amendments to our Indian lands rules at 30 CFR part 750, and to our Federal lands rules at 30 CFR parts 740 and 746, to reflect the proposed change in the definition, and to clarify the effect of the proposed change. These proposed changes are also discussed in more detail below. For a full discussion of the proposed rule, see 64 FR 8464 (February 19, 1999).

We have decided not to adopt any of the proposed rules, for the reasons discussed below.

II. How Do We Define Indian Lands Under the Existing Rule, and What Lands Do We Regulate as Indian Lands Under That Definition?

The term ''Indian lands'' is defined at 30 CFR 700.5 as ''all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian Tribe.''

The regulatory definition is identical to the definition of Indian lands in SMCRA at 30 U.S.C. 1291(9). Under that definition, we have asserted regulatory jurisdiction over all lands located within the boundaries of Federal Indian reservations, and certain lands outside reservation boundaries where the surface or mineral estate is held in trust for or supervised by an Indian tribe. The off-reservation lands include those portions of the Crow Ceded Strip that are within the permit area of Westmoreland Resources' Absaloka Mine in Montana where the mineral estate (i.e. the coal) is held in trust for and beneficially owned by the Crow Tribe. We also regulate coal mining on certain split-estate lands in the permit area of the McKinley Mine in New Mexico, on which the Navajo Nation (''the Nation'' or ''the Navajo'') owns the surface estate and the mineral rights are privately owned.

As we noted in the proposed rule, the McKinley Mine has a permit area of 18,692 acres. It is an active coal mining operation owned and operated by the Pittsburg & Midway (P&M) Coal Mining Company. The mine straddles the boundary of the Navajo Indian Reservation near the Arizona-New Mexico border. The portion of the permit area that lies within the Navajo reservation and on certain adjacent off-reservation split-estate Navajo fee lands, is regulated by OSM. The remainder of the mine, the so-called south area, is composed of Federal, private, State, and allotted lands and is regulated under a permit issued by the New Mexico regulatory authority (''the State'' or ''New Mexico'').

To date, P&M has mined approximately 2,905 acres in 45 of the 48 allotments included within the McKinley Mine permit area. Within the next two years, P&M plans to mine the leased Federal coal on an additional 18 acres in one of the previously disturbed allotments. Beyond this, there is no further mining planned within allotments at the McKinley Mine.

We assumed regulatory authority over the Navajo fee lands at the McKinley

Mine subsequent to two 1994 district court decisions (*Pittsburg & Midway Coal Mining Co.* v. *Babbitt*, No. Civ. 90–730 (D.N.M. Sept. 13, 1994); and *New Mexico* v. *Lujan*, No. 89–758–M (D.N.M. Feb. 14, 1994)). Those decisions upheld the Department's interpretation that such lands are Indian lands for purposes of SMCRA regulation because the Tribe's ownership of the surface estate in fee simple renders the lands supervised by the Tribe within the meaning of section 701(9) of SMCRA.

III. Why Did We Propose the Rule?

The Secretary agreed in a settlement agreement to propose a rule clarifying the definition of Indian lands at 30 CFR 700.5. The settlement agreement concerned consolidated actions filed by the Hopi Tribe and the Navajo Nation, *Hopi Indian Tribe* v. *Babbitt*, Nos. 89–2055, 89–2066 (D.D.C. June 20, 1995). For purposes of SMCRA and the implementing regulations, the Secretary agreed to propose including within the definition of Indian Lands ''all allotments held in trust by the Federal Government for an individual Indian or Indians, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments, where such allotments are located within a tribal land consolidation area approved by the Secretary or his authorized representative under 25 U.S.C. 2203.''

For purposes of this discussion, a brief history of the background of the proposed rule may be helpful. The Surface Mining Control and Reclamation Act of 1977, Public Law 95–87, 30 U.S.C. 1201 *et seq.*, (SMCRA or the Act) provides statutory authority for the development of regulations for surface coal mining and reclamation operations. Section 710 of SMCRA concerns the regulation of surface coal mining operations on Indian lands. Sections 710(d) and (e) identify the applicable SMCRA regulatory provisions for surface coal mining operations on Indian lands. The Secretary of the Interior issued a final rule on September 28, 1984, implementing the requirements of sections 710(d) and (e) of SMCRA (49 FR 38462). A new subchapter, Subchapter E—Indian Lands Program, was added to 30 CFR Chapter VII. Subchapter E included Part 750—Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands, and Part 755—Tribal-Federal Intergovernmental Agreements.

Our regulations at 30 CFR Part 750 specify the applicable requirements for coal exploration and for surface coal mining and reclamation operations on Indian lands, including permit review and permit processing; permit applications; performance standards; bonding; inspection and enforcement (I&E); and various other provisions. Section 750.6 designates OSM as the SMCRA regulatory authority on Indian lands and describes our permitting, consultation and I&E responsibilities under SMCRA. Section 750.6 also specifies the Indian lands responsibilities of the Bureau of Land Management (BLM), the Bureau of Indian Affairs (BIA), and the Minerals Management Service (MMS).

The final Indian lands rule promulgated in 1984 was challenged on various grounds by certain States (*New Mexico ex rel. Energy and Minerals Dep't, Mining and Minerals Div'n* v. *United States Dep't of the Interior*, Civ. No. 84–3572 (D.D.C.)), and by the National Coal Association and American Mining Congress (*NCA* v. *United States Dep't of the Interior*, Civ. No. 84–3586 (D.D.C.)).

The Department of the Interior settled those two challenges by entering into separate agreements with the plaintiffs in which we agreed to undertake further rulemaking actions concerning the Indian lands program. The second round of Indian lands rulemaking led to the issuance of a final rule on May 22, 1989 (54 FR 22182). The 1989 final rule, issued jointly by OSM and BIA, amended our regulations at 30 CFR part 750, as well as BIA's regulations at 25 CFR part 200 governing leases of coal on Indian lands.

In the preamble to the 1989 final rule, we clarified that we are the exclusive SMCRA regulatory authority on Indian lands until the United States Congress enacts legislation pursuant to section 710(a) of SMCRA, to allow Indian Tribes to assume full regulatory authority over surface coal mining operations on Indian lands, and the Tribes elect to do so.[1] We also clarified that, for purposes of SMCRA regulatory jurisdiction, we considered off-reservation individual Indian allotments to be Indian lands only if an interest in the surface or mineral estate is held in trust for or supervised by an Indian Tribe. We did not, however, amend the regulatory definition of Indian lands at 30 CFR 700.5.

The Hopi Tribe and the Navajo Nation challenged the 1989 final rule on several grounds. The Navajo Nation asserted that individual Indian trust allotments are Indian lands subject to OSM regulation under SMCRA and that the Secretary may not lawfully allow or delegate to the States any permitting or regulatory authority under SMCRA on such lands. The Tribes' challenges were subsequently consolidated and, in April 1995, were settled in an agreement between the Department of the Interior and the two plaintiff Tribes. The U.S. District Court for the District of Columbia approved the settlement in June 1995. See *Hopi Indian Tribe* v. *Babbitt*, Nos. 89–2055, 89–2066 (D.D.C. June 20, 1995).

Under the terms of the settlement, the Secretary agreed, among other things, to propose a rule clarifying the definition of Indian lands at 30 CFR 700.5 for purposes of SMCRA and the implementing regulations. Specifically, the Secretary agreed to propose including as Indian lands ''all allotments held in trust by the Federal Government for an individual Indian or Indians, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments, where such allotments are located within a tribal land consolidation area approved by the Secretary or his authorized representative under 25 U.S.C. 2203.''

We proposed the clarified definition of Indian lands on February 19, 1999 (64 FR 8464). We also proposed several changes to the Indian lands program at 30 CFR part 750 to make those regulations consistent with the proposed change in the definition of Indian lands. We further proposed various rule changes to the Indian lands program and to the Federal lands program at 30 CFR parts 740 and 746 to specify the applicable regulatory requirements for mining operations involving the mining of leased Federal coal on Indian lands. We anticipated that the necessity for such requirements would arise for the first time, should we ultimately adopt the revised definition of Indian lands.

We held a public hearing on the proposed rule in Albuquerque, New Mexico on June 8, 1999. The public comment period on the proposed rule was originally scheduled to close on April 20, 1999, but we subsequently extended the comment period through June 21 after we received several requests for an extension. Commenters included the Navajo Nation, the State of New Mexico, the National Mining

[1] SMCRA was amended on December 20, 2006, to provide for tribal primacy. As amended, SMCRA section 710 provides in relevant part as follows:

''(j)(A)(1) In General.—Notwithstanding any other provision of law, an Indian tribe may apply for, and obtain the approval of, a tribal program under section 503 regulating in whole or in part surface coal mining and reclamation operations on reservation land under the jurisdiction of the Indian tribe using the procedures of section 504(e).''

Tax Relief and Health Care Act of 2006, Pub. L. 109–432, Div. C, Title II, Subtitle A.

Association and Pittsburg & Midway Coal Company (McKinley Mine).

IV. What Would Be the Effect of the Proposed Rule?

A. What Lands Would Be Affected?

If adopted as proposed, the definition of Indian Lands would include allotted lands located within an approved tribal land consolidation area but outside the boundaries of a reservation. Such allotments would then be subject to OSM's regulatory authority under the Indian Lands Program. The only lands approved for coal mining that would be brought within the scope of OSM's jurisdiction if the proposed rule were to be adopted are 48 Navajo allotments overlying leased Federal coal within the existing McKinley Mine permit area in New Mexico. These allotments are currently regulated by the State. The McKinley Mine permit area straddles the boundary of the Navajo Reservation near the Arizona-New Mexico border. The portions of the permit area that lie within the reservation boundaries and on an adjacent parcel of off-reservation Navajo fee lands, are collectively referred to as the north area and are regulated by OSM. The remainder of the mine, the so-called south area, is composed of Federal, private, State, and allotted lands occurring in a complex checkerboard pattern, and is regulated by the State of New Mexico. The allotted lands include all or part of 48 individual allotments, 45 of which contain leased Federal coal and three of which contain unleased Federal coal. No other coal mines in the U.S. would be affected by the proposed rule at this time.

B. How Would the Proposed Rule Affect Funding Under SMCRA Title V and Title IV, and Responsibility for AML Reclamation?

Effect on Allocation of Title IV Funding and Responsibility for AML Reclamation: As we explained in the proposed rule, we collect AML reclamation fees from coal mining operations pursuant to Title IV of SMCRA and the implementing regulations. Historically, fifty percent of the fees from coal produced from State and private lands within a State, or from coal produced from Indian lands, is allocated to the respective State or Tribal share for use, once appropriated, on eligible reclamation projects and activities. The Navajo Nation, as well as the Crow and Hopi Tribes, have approved Title IV programs. However, beginning with fees collected during fiscal year 2008, States and Indian Tribes that have certified the completion of all coal-related reclamation under section 411(a) of SMCRA, as the Navajo Nation has done, will receive payments from unappropriated funds in the U.S. Treasury in lieu of that allocation. Noncertified States, such as New Mexico, will receive their 50% allocation in the form of grants for AML reclamation purposes. Tax Relief and Health Care Act of 2006, Public Law 109–432, Div. C, Title II, Subtitle A.

If allotted lands were designated Indian lands as proposed, the resulting change in the jurisdictional status of Navajo consolidation area allotments would mean that the Navajo Nation would receive Treasury payments equal to 50% of the AML reclamation fees generated by coal production on those allotments. The change also would mean that New Mexico would no longer receive 50% of the fees generated by coal production on those allotments.

Effect on Allocation of Title V Funding: In the proposed rule, we noted that the change in definition of Indian lands, if adopted, could also potentially reduce the amount of annual funding that we provide to the State of New Mexico to support the implementation of its Title V regulatory program. As we explained in the proposed rule, the State's Title V funding formula is based, in part, on the total acreage subject to State regulatory jurisdiction; thus, the proposed change in the Indian lands definition could result in a small decrease in the State's annual Title V grant since it would immediately reduce the amount of land subject to State regulation.

V. Why Have We Decided Not To Adopt the Proposed Rule?

With the publication of the February 19, 1999, proposed rule, we met our obligation under the 1995 settlement agreement to propose the change in the definition of Indian Lands. As discussed above, we then reviewed the rulemaking record and decided whether to adopt a final rule in consideration of all of the information in the record. We further considered the extent to which it was appropriate to pursue any other rulemaking to address the question of when allotments are supervised by a tribe. Finally, we evaluated further actions that are likely on the underlying issue.

A. How Did We Determine What Action To Take on the Proposed Rule?

In determining what action to take in this final rulemaking, we were required to evaluate the administrative record to determine whether the record supports a determination that all allotted lands in an approved tribal land consolidation area are supervised by an Indian tribe. Effectively, to adopt the proposed rule, we would need to find that the Navajo Nation supervises Navajo allotments located outside the reservation but within the Navajo Land Consolidation Area.

As a first step in our evaluation, we determined what is meant by the term ''supervised by'' in the SMCRA definition. We also extensively researched the legal and historical background of the definition of Indian Lands. As discussed below, we concluded that to ''supervise'' means to have the function, right, or authority to superintend, regulate, or oversee a person or thing. Thus in general, a tribe supervises lands if the tribe has the function, right, or authority to superintend, regulate, or oversee the lands or what is done affecting the lands.

We then reviewed the record and concluded that the record does not support a determination that all allotted lands in an approved tribal land consolidation area are supervised by an Indian tribe. Specifically, the record does not demonstrate whether or not the Navajo Nation supervises the off-reservation Navajo allotted lands in the approved Navajo tribal land consolidation area.

B. What Are Our Reasons for Not Adopting the Proposed Rule?

1. Summary

After reviewing the entire administrative record, including all comments received on the proposed rule, we conclude that, for the reasons set out below, the record does not support a finding that all allotted lands in an approved tribal land consolidation area are Indian lands for purposes of SMCRA; and that the record also does not support a conclusion one way or the other as to whether off-reservation Navajo allotted lands are supervised by the Nation. Further, as discussed below, we conclude that (1) this jurisdictional issue has arisen only once so far, and is unlikely to arise frequently in the future. (However, the proposed rule would be over-inclusive, because it would also apply without further analysis to any other similarly situated allotments that might occur; and this is not appropriate, because case-by-case analysis of all relevant facts and law is required for any such determination of tribal interests.) and (2) this issue is not suited to a rulemaking of nationwide applicability, but rather should be addressed in case-by-case determinations.

For the above reasons, we conclude that the record before us neither adequately supports nor clearly precludes a finding of supervision in fact or in law. Therefore, we conclude that off-reservation Navajo allotted lands may be supervised by the Navajo Nation and thus may be Indian lands; but that any determination as to supervision of specific off-reservation Navajo allotted lands is more properly made on a case-by-case basis. Hence, we have decided not to adopt the proposed rule.

2. What Is the Meaning of ''Supervised by''?

Statutory construction is a two-step process. In the first step, we ask whether the intent of Congress is clear. *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984), *reh'g denied*, 468 U.S. 1227 (1984) (''*Chevron*''). If so, we ''must give effect to the unambiguously expressed intent of Congress.'' *Id.* at 842–43. We must ascribe to the statutory words their plain and ordinary meaning, absent convincing reasons to the contrary. The words are the best indicators of legislative intent. *See, e.g.*, *Save Our Cumberland Mountains* v. *Clark*, 725 F.2d 1422 (D.C. Cir. 1982). *See also Chevron*, 467 U.S. 837, 839.

In the second step of statutory construction, if Congress has not ''spoken to the precise question at issue,'' our construction of the statute must be ''permissible,'' *i.e.,* ''rational and consistent with the statute.'' *See Chevron*, 467 U.S. at 842, 843.

a. Is the Statute Ambiguous?

Summary: SMCRA does not define ''supervised by,'' and the legislative history of SMCRA is silent as to Congress' intention. However, a statute is not ambiguous if the terms used have a commonly accepted interpretation. After review of all comments on the proposed rule, and the materials discussed below, we conclude that, in general, a tribe supervises lands if the tribe has the function, right, or authority of superintending, regulating, or overseeing those lands. Thus, the Indian lands criterion, ''supervised by,'' addresses whether the tribe has the function, right, or authority of regulating, superintending, or overseeing the lands in question, and what is done affecting those lands. Although we found many variations in the definitions and synonyms ascribed to these terms, we believe that the thrust of relevant definitions and interpretations may be summarized as follows: ''supervise'' or ''supervision'' means the function, right, or authority of superintending, regulating, or overseeing a person or thing. We conclude that this is the meaning intended by Congress.

No SMCRA Definition or SMCRA Legislative History: The term ''supervised by'' is neither defined in SMCRA nor explained in the legislative history of the statute. *See Valencia Energy Co.*, 109 IBLA 40 (1989), *aff'd*, *New Mexico ex rel. Energy, Minerals & Natural Resources Dep't* v. *Lujan*, No. 89–758–M, 21 ILR 3113 (D.N.M. February 14, 1994) (''*Valencia*'').

Commonly Accepted Interpretation of ''Supervise'' or ''Supervision'': To ascertain whether the term has a commonly accepted interpretation, and therefore is not ambiguous, we reviewed definitions and interpretations of the word ''supervise'' given in various dictionaries, a thesaurus and relevant case law. One widely used dictionary says ''supervise'' means: ''to direct and inspect the performance of; superintend.'' (*The American Heritage Dictionary, Second College Edition* (1982)). Another dictionary says ''supervision'' refers ''to the function of watching, guarding, or overseeing.'' (*The American Heritage Dictionary of the English Language, Fourth Edition* (2000)). Similarly, other definitions of ''supervise include: ''superintend, oversee,'' (*Merriam Webster's Collegiate Dictionary, Tenth Edition* (1996)); and ''1. To direct and watch over the work and performance of others (synonyms: boss, overlook, oversee, superintend). 2. To control the course of (an activity).'' (*Roget's II: The New Thesaurus* (1980)). In addition, Black's Law Dictionary defines ''supervise'' as ''to have general oversight over, to superintend or to inspect.'' *Black's Law Dictionary* (7th ed. 1999).

Case law interpreting the word ''supervise,'' gives some similar interpretations of the term. For example:

> According to the Century Dictionary, * * * the word ''supervise'' means to oversee; have charge of, with authority to direct or regulate. * * * *New York Life Ins. Co.* v. *Rhodes*, 60 S.E. 828, 831, 4 Ga. App. 25.
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> Common meaning of ''supervise'' is to superintend which means to have charge and direction of, to direct course and oversee details, to regulate with authority, to manage, to have or exercise the charge and oversight of, to oversee with power of direction, to take care of with authority. *Nederlandsch-Amerikaansche-Stoomvaart-Mattschappij; Holland-America Line* v. *Vassallo*, Tex. Civ. App., 365 S.W. 2d 650, 656 [sic].
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> * * * * *
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> The words ''supervise,'' ''superintend,'' and ''oversee,'' in ordinary use and common acceptance, have substantially the same meaning, which is to have or exercise the charge and oversight of. *Bacigalupo* v. *Fleming*, 102 S.E.2d 321, 325, 199 Va. 827.
>
> *Words and Phrases*, ''Supervise'' (2001).

Although we found many variations in the definitions and synonyms ascribed to these terms, we believe that the thrust of relevant definitions and interpretations may be summarized as follows: ''supervise'' or ''supervision'' means the function, right, or authority of superintending, regulating, or overseeing a person or thing. Under the first prong of the *Chevron* test, and after review of all comments on the proposed rule, and review of the materials referenced in this preamble, we conclude that this is the meaning intended by Congress. Thus, we conclude that the statute is unambiguous as to the meaning of the term ''supervised by.''

b. What Is Our Alternative Interpretation of the Statute, if a Court Were To Disagree With Our Construction Above?

Although we conclude that the statutory term ''supervised by'' is, for purposes of the proposed rule, unambiguous, we recognize that, in light of the variations in meaning ascribed to the term in different contexts, it is possible that a court might conclude differently. If a court did so hold, then in the absence of clear statutory language or express Congressional direction, OSM has the authority to make a reasonable or permissible interpretation of the statutory phrase. Congress, when it leaves ambiguity in a statute to be implemented by an agency, is presumed to intend that the ambiguity will be resolved by the agency, and intends the agency to have the discretion allowed by an ambiguity. *Chevron*, 467 U.S. 837, 843; *Smiley* v. *Citibank*, 517 U.S. 735, 740–41 (1996).

If a court were to disagree with our construction of the term ''supervised by'' as used in SMCRA § 701.9, as unambiguous, and were to rule that, on the contrary, the term is ambiguous, the term would have to be construed under a *Chevron* Step II analysis. Using that alternative analysis we conclude that a tribe supervises lands if the tribe has the function, right, or authority of superintending, regulating, or overseeing those lands. Thus, for purposes of our review of the record and action on the proposed rule, we conclude that the Indian lands criterion, ''supervised by,'' addresses whether the tribe has the right or authority to regulate, superintend, or oversee the lands in question (or the function of

doing so); or whether the tribe has the right or authority to regulate, superintend, or oversee what is done affecting those lands (or the function of doing so).

c. What Is the Relationship of Tribal Supervision to the Roles of Other Governments on Lands?

A determination as to tribal supervision does not require that we compare state or Federal supervision versus tribal supervision in order to determine whether allotments are Indian lands. Rather, we determine whether the tribe's interests or actions suffice to constitute supervision for purposes of SMCRA. Nothing in the SMCRA definition requires that the tribe have exclusive supervision or primary supervision. Thus, the definition does not require that either a state or the Federal Government be excluded from supervising the land. Similarly, the statute does not require that the tribe have a greater supervisory interest or role than a state or the Federal Government does. Further, the definition does not require that the supervision specifically relate to SMCRA or coal mining. This is consistent with the fact that OSM is the SMCRA regulatory authority on designated Indian lands, and that a state is typically the SMCRA regulatory authority on other lands. Thus, either a state or OSM would have the primary ''supervisory'' responsibility for regulating surface coal mining operations and their effects on lands under SMCRA. However, the definition does require that a tribe supervise the lands. In this regard, supervision of activities that may significantly affect lands (such as building, grazing, and other land uses, water pollution, etc.) may be evidence of, or an aspect of, supervision of the lands. We believe that, logically, supervision of actions that affect lands is a basic means of supervising the affected lands.

d. Is Our Construction of ''Supervised by'' Consistent With SMCRA Case Law?

Our construction of ''supervised by'' and ''supervise'' is not controverted by the decisions in either of the two cases concerning the interpretation and application of the term under SMCRA. *Valencia Energy Co.,* 109 IBLA 40 (May 26, 1989) (''*Valencia*''), *aff'd sub nom. New Mexico* v. *Lujan,* No. 89–758-M (D.N.M. February 14, 1994), 21 I.L.R. 3113 (June 1994); and *Pittsburg & Midway Coal Mining Co.* v. *OSMRE,* 115 IBLA 148 (1990) (''*Pittsburg & Midway*''), *aff'd, The Pittsburg & Midway Coal Mining Co.* v. *Babbitt,* No. 90–730 (D.N.M. September 12, 1994). Neither of the two cases has led to a decision that defines the term specifically and unambiguously. Further, neither case has yielded a final decision that addresses the applicability of the term to allotted lands.

Valencia addressed our interpretation that certain lands, in which a tribe held a fee interest in the surface, were ''Indian lands'' under SMCRA. One of our bases for our interpretation was that land owned by the Nation necessarily constituted land ''supervised by'' the Nation. We argued to the IBLA that, ''if ownership were not supervision, it would be impossible for a property interest to reach the level of supervision.'' The IBLA agreed. 109 IBLA 40 (1989). In its appeal to the IBLA, Valencia had advanced the argument that, ''[s]ince the lands in question are not presently within the Tribe's regulatory jurisdiction, * * * it is beyond the power of OSMRE to include such lands within the definition of ''Indian lands.'' 109 IBLA 51. Further, Valencia had argued that, since the Navajo Nation had conveyed all its rights to the surface for approximately 50 years, it had no supervisory authority over the land until the expiration of the lease term. *Id.* at 52. In rejecting Valencia's arguments, the IBLA concluded that, ''where an Indian tribe owns either the mineral estate or the surface in fee of any land outside of the exterior boundaries of an Indian Reservation, such land is ''supervised by an Indian tribe'' within the meaning of 30 U.S.C. 1201(9) (1982) and is properly subject to the Federal Program for Indian Lands established in 30 CFR Part 750.'' *Id.* at 67. The IBLA found that, while an OSM analysis ''provided more than a sufficient basis upon which to find that the Navajo Tribe did exercise supervision in fact, we are also of the view that supervision in law, *i.e.*, mere ownership of the surface fee, was sufficient, in and of itself, to compel the conclusion that the lands at issue were 'Indian lands.' '' 109 IBLA at 65.

The *Valencia* holding on ownership of either the mineral or surface estate was also followed by the IBLA in *Pittsburg & Midway. Pittsburg & Midway* concerned a consolidated set of cases, related to a permit issued by OSM. The permit effectively asserted jurisdiction under the SMCRA Indian lands program over two categories of lands: Off-reservation lands in which the surface estate is owned by the Navajo; and any allotted lands held by members of the Navajo Nation that might be determined by OSM to be supervised by the Tribe. See Memorandum of the Office of Surface Mining Reclamation and Enforcement at 9–10 and Attachments A and B, and Memorandum of the Office of Surface Mining Reclamation and Enforcement on the Issue of Jurisdiction over Off-Reservation Indian Tribal Split Estate Lands at 5 and n. 2, *Pittsburg & Midway,* 115 IBLA 148 [*ref.* OHA Docket No. TU–6–2–PR]. At that time, we did not identify any specific off-reservation allotted lands as being supervised by the Nation. The permittee challenged our jurisdiction to issue permits for any off-reservation lands within the mine. The Navajo Nation intervened in the case, and asserted, *inter alia,* that OSM had jurisdiction over all of the mine lands, including the off-reservation allotments.

The permittee argued that ''Indian lands'' does not apply to lands outside a reservation where a tribe owns only the surface estate, because the SMCRA definition requires that the tribe also own the mineral estate. The IBLA held that we had jurisdiction to issue the permit with respect to the off-reservation lands in which the Navajo held only the surface estate. The IBLA also held that our interpretation of the definition, as set out in *Valencia,* was reasonable and therefore the definition applies to ownership of a split estate. The IBLA noted that it is clear that supervision is one of the rights encompassed in fee simple ownership of land, and rejected the permittee's assertion that ''supervision'' must mean unfettered management of land. 115 IBLA 156. Concerning one of the consolidated cases, the IBLA concluded that the Administrative Law Judge's decision did not provide a basis for the judge's determination that the off-reservation allotted lands in the permit area are not supervised by the Tribe. *Id.* at 161. The IBLA held further that the question cannot be resolved in the absence of a hearing. Therefore, the IBLA remanded the case for a hearing and decision on the question of whether the off-reservation allotted lands were ''Indian lands'' because they were ''held in trust for or supervised by'' the Tribe. *Id.* The remanded case on allotted lands was subsequently stayed in 1992 pending the outcome of the district court appeal of the case (*Pittsburg & Midway Coal Mining Co.* v. *OSM,* Docket Nos. TU 6–2–PR, TU 7–6–R, TU 6–60–R, *order entered* October 16, 1992 (OHA Hearings Div.). Subsequently, it is our understanding that the remanded case was informally stayed by consensus of the parties pending final disposition of the litigation that led to the 1995 settlement agreement discussed above. Then the case was informally stayed pending final action on our proposed Indian lands rule published on February 19, 1999. The

remanded case has now been dismissed without prejudice, although OSM stated that it did not support the dismissal, because this rulemaking was pending and dismissal of the case could impede resolution of the ''Indian lands'' status issue. *Pittsburg & Midway Coal Mining Co.* v. *OSM,* OSMRE's Response to Order to Show Cause, Docket Nos. TU 6–2–PR, TU 7–6–R, TU 6–60–R (OHA Departmental Hearings Div.).

Regardless of whether the term ''supervised by'' is construed under *Chevron* Step I or Step II, we conclude that, consistent with *Valencia,* supervision of lands may be supervision in fact or supervision in law (or a mixed question of fact and law). That is, supervision may exist either because a tribe has the right or authority to superintend, regulate, or oversee the lands [supervision in law]; or because the tribe currently or historically superintends, regulates, or oversees the lands [supervision in fact]; or both.

e. Is Our Construction of ''Supervised by'' Consistent With Other Legislative History Relevant to Congress' Intent in SMCRA?

Our interpretation is also consistent with the interpretation of the phrase ''supervised by an Indian tribe'' in the legislative history of another bill considered by Congress at the same time it considered SMCRA, the Land Use Policy Planning and Assistance Act of 1973 (LUPA).

In *Valencia,* in evaluating the evidence of Congress' intent on this issue, we noted that LUPA contained a definition of ''Indian lands'' similar to that in SMCRA and was drafted at approximately the same time as the SMCRA definition of ''Indian lands.'' In explaining the scope of the phrase ''supervised by an Indian tribe'' in LUPA, the Senate Report on the bill noted that the phrase ''is intended to cover lands which are Indian country for all practical purposes but which do not enjoy reservation status.'' S. Rep. No. 93–197, at 127 (1973). The committee noted that tribal land use planning programs would be largely meaningless if the tribes could not control key reservation tracts that they did not own ''or lands outside a reservation which they own or *for which they possessed administrative responsibility.*'' *Id.* (Emphasis added). From this, we argued in *Valencia* that lands owned by an Indian tribe are ''Indian lands'' under SMCRA section 701(9).

Valencia argued that recourse to the legislative history of LUPA was unwarranted because it involved a different piece of legislation, that was never enacted, and that was considered four years before SMCRA was adopted. Valencia also argued that, regardless of what may have been contemplated by the original drafters of the language, their interpretation could not be said to be binding on the Congress that adopted SMCRA. However, the IBLA rejected all of these arguments, noting that: LUPA was considered by the same committee that was formulating an earlier version of SMCRA; the definition of ''Indian lands'' in the bills was identical; and in the ensuing 4 years, the SMCRA definition of ''Indian lands'' remained the same. The IBLA concluded that ''[i]t is simply logical to assume that a single legislative committee, reviewing two separate pieces of legislation, both containing the same verbatim definition, intended the same interpretation of that definition'' in both pieces of legislation. 109 IBLA 50. The IBLA also noted that Valencia's argument would have had more force if there had been any indication in the legislative history of a subsequent change in Congress' interpretation, but no such change had occurred, despite Congress' continual reexamination of the provision until passage. 109 IBLA 61 [citing *In re: Permanent Surface Mining Regulation Litigation,* 627 F.2d 1346, 1364 (DC Cir. 1980)]. Noting that the Court of Appeals for the District of Columbia had relied heavily on the legislative history of LUPA in interpreting SMCRA section 710, the IBLA stated that recourse to the legislative history of LUPA to construe the phrase ''supervised by an Indian tribe'' in SMCRA section 701(9) was proper. 109 IBLA 62. As noted above, *Valencia* was upheld by a district court on appeal.

The legislative history of LUPA using the phrase ''lands * * * for which they possessed *administrative responsibility*'' to refer to lands supervised by a tribe, is consistent with our interpretation of the term ''supervised by.'' However, even if it were argued that the IBLA erred and that the legislative history of LUPA does not establish beyond dispute Congress' intent with regard to the interpretation of ''supervised by,'' we are not relying solely upon that legislative history to establish Congress' intent with regard to the phrase. Rather, as discussed above, we conclude that Congress intended the commonly understood meaning; namely, ''supervise'' or ''supervision'' means the function, right or authority of superintending, regulating, or overseeing a person or thing. And, as discussed above, if a court were to conclude that Congress' intent was not clear, we believe that our interpretation is reasonable.

3. Does the Record Demonstrate Navajo Nation Supervision of Off-Reservation Allotted Lands in the Consolidation Area?

After review of the record before us, including all comments, we conclude that the record does not demonstrate that, in general, all tribes supervise their members' allotted lands. The record does not demonstrate any relevant interests or functions that all tribes have on their tribal members' allotted lands. More specifically, as discussed below, the record does not clearly demonstrate whether the Navajo Nation supervises the Navajo allotted lands outside the Navajo reservation, in the approved tribal land consolidation area. The record does not clearly and indisputably establish the extent to which the Nation supervises those lands in law because of any sovereign or congressionally delegated authority on these allotted lands relevant to supervision of the lands under SMCRA. Likewise, it is not clear whether the Nation supervises those lands in fact because of any actions or programs of the Nation that amount to superintending, regulating, or overseeing the lands. Thus, the record does not establish whether the Nation supervises any allotted lands in fact or in law. Equally important, for any interests that the Nation may assert that it has or any actions that the Nation may take on allotted lands, the record does not clearly demonstrate relevance or significance to tribal supervision of those lands under SMCRA. In summary, the record is inadequate to support a determination as to whether any Navajo off-reservation allotted lands are supervised by the Navajo Nation and are thus Indian lands. Therefore, we conclude that the record does not support the proposed rule.

a. Why Is Case-by-Case Analysis Needed for Evaluation of Tribes' Authorities Over Allotted Lands?

We could find no consistent rule articulated by the courts concerning tribal authority over any off-reservation lands or land uses, although in general the commentators and decisions referenced in this notice emphasize the need for full discussion of all relevant factors, including legal and factual parameters concerning a tribe's authority. Tribes' authorities over various types of lands have long been the subject of contention and confusion.

Some courts' decisions make general statements about tribes' authorities.[2]

The Supreme Court has stated that tribes' inherent sovereign powers are presumed to be retained unless ''withdrawn by treaty or statute, or by implication as a necessary result of their dependent status.'' *United States* v. *Wheeler,* 435 U.S. 313, 323 (1978). *See also* Dean B. Suagee, Christopher T. Stearns, *Indigenous Self-Government, Environmental Protection, and the Consent of the Governed: A Tribal Environmental Review Process,* 5 Colo. J. Int'l L. & Pol'y 59, 72, n. 48 (1994).

Some commentators assert that tribes typically have little or no authority or jurisdiction over off-reservation lands.[3] In contrast, other authors note that, in general, tribal authority to regulate in Indian country ''arises from the inherent sovereign powers of the native nations;'' and assert that

> Any judicial determination of the sovereign powers of a native nation begins with the doctrine that tribes retain all inherent powers of national sovereignty that have not been ceded by treaty, excised by federal legislation, or divested by the courts as inconsistent with the federal government's assertion of superior sovereignty. The domestic test for the exercise of native governmental powers thus is not whether a native nation *has* a sovereign power, but whether the tribe has lost it. The initial existence of tribal sovereign powers is presumed.[4]

On several occasions, the Department of the Interior has stated its position on the question of tribal authority over property. However, those positions have emphasized that the powers of a particular tribe must be based on case-by-case detailed analysis of all legal authorities applicable to the tribe.[5]

All of the evaluations of tribal authority that we have reviewed emphasize case-by-case detailed analysis, because the circumstances of each tribe are unique, relative to the tribe's sovereignty, jurisdiction, and interests. Those circumstances may be quite complex, and all relevant legal authorities and all relevant facts must be reviewed before a determination can be made with regard to a particular tribe, particular lands, or particular tribal requirements.[6]

A determination should include both generally and specifically applicable parameters, because some legislative schemes are applicable only to specific tribes or groups of tribes. ''Accordingly, in addition to general principles of federal Indian law, one must consider any statutes, treaties, judicial decisions, or executive actions that may be directed to a particular tribe or to a class of tribes.'' Stern, *supra* note 2, at 85 & n. 85. Further, courts generally inquire into all of the facts and circumstances behind each assertion of tribal authority. Because of Indian tribes' dependent status, the Supreme Court has found limitations on tribal authority, which depend on the context in which the issue arises. *Id,* at 85–86.

b. What Is the Relevance of ''Indian Country'' Law?

As discussed below, it is now settled law that off-reservation allotted lands are a category of lands included in ''Indian country.'' A number of judicial decisions address the Indian country status of off-reservation lands in which Indians have interests, as well as the interests of the Federal Government and Indian tribes in those lands. We have reviewed the decisions concerning Indian country status to evaluate whether they aid in determining the interests of tribes generally in allotted lands. We found some useful guidance, but could find no cases that clearly establish any generally applicable conclusions as to any interests that all Indian tribes might hold in Indian country. Rather, the reverse is true: as discussed herein, any determination as to the interests of any tribe in lands must be made on a case-by-case basis, considering all relevant facts and law.

The proposed rule language concerning allotted lands is somewhat similar to the language addressing allotted lands in the definition of ''Indian country'' in 18 U.S.C. 1151. That provision states that:

> [T]he term ''Indian country'' * * * means (a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government * * *, (b) all dependent Indian communities within the borders of the United States * * *, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Under this provision, for purposes of federal criminal and civil jurisdiction,

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[2] For example, decisions hold that tribal governments are distinct, independent political communities, [*Worcester v. Georgia,* 31 U.S. (6 Pet.) 515, 559 (1832)] with inherent attributes of sovereignty [*United States* v. *Mazurie,* 419 U.S. 544, 557 (1975)]. The Supreme Court has described tribes' status as:

> '' 'An anomalous one and of complex character,' '' for despite their partial assimilation into American culture, the tribes have retained '' 'a semi-independent position * * * not as States, not as nations, not as possessed of the full attributes of sovereignty, but as a separate people, with the power of regulating their internal and social relations, and thus far not brought under the laws of the Union or of the State within whose limits they resided.' ''

White Mountain Apache Tribe v. *Bracker,* 448 U.S. 136, 142 (1980) [quoting *McClanahan* v. *Arizona State Tax Comm'n,* 411 U.S. 164, 173 (1973)]; *see also United States* v. *Kagama,* 118 U.S. 375, 381–82 (1886).

[3] For example, one author noted that Indian tribes derive powers from three principal sources: inherent tribal sovereignty, treaties with the United States, and delegation from the United States Congress [citing *Montana* v. *United States,* 450 U.S. 544, 563–65 (1981)]. Walter E. Stern, *Environmental Regulation on Indian Lands: A Business Perspective.* 7–SPG Nat. Resources & Env't 20–21 (1993). However, Stern concluded that, by virtue of Indian tribes' status within the Federal system, their inherent sovereign powers are diminished. ''Tribal sovereignty is subject to limitation by specific treaty provisions, by [Federal] statute, * * * or by implication due to the tribes' dependent status. [*Babbitt Ford, Inc.* v. *Navajo Tribe,* 710 F.2d 587, 591 (9th Cir. 1983), *cert. denied,* 466 U.S. 926 (1984).]'' *Id.* Stern focuses on the fact that ''[t]he U.S. Supreme Court emphasizes there is ''a significant geographical component to tribal sovereignty'' [*White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136 (1980).]'' and concluded that, ''[a]bsent a treaty provision or express congressional delegation of authority, tribal powers extend only to the reservation boundary.'' *Id.* The author did recognize that some tribes assert jurisdiction over non-Indian off-reservation activities, and specifically acknowledges that ''the Navajo Tribe asserts taxing jurisdiction over the ''Eastern Navajo Agency'' area to the east and south of its reservation.'' However, the author pointed out that this assertion was then the subject of litigation, citing *Pittsburgh [sic] & Midway Coal Mining Co.* v. *Yazzie,* 909 F.2d 1387 (10th Cir. 1990). 7–SPG Nat. Resources & Env't 20–21 (1993).

[4] Judith V. Royster and Rory Snow Arrow Fausett, *Control of The Reservation Environment: Tribal Primacy, Federal Delegation, And The Limits of State Intrusion.* 64 Wash. L. Rev. 581, 593–594 (1989) (Emphasis added; citations omitted).

[5] In one instance, the Solicitor of the Department of the Interior determined that, in general, the sovereign powers of the tribe extend over the property as well as the person of its members, and are not restricted to lands or funds it owns. Memorandum Opinion of the Solicitor, Department of the Interior, M–27781, Powers of Indian Tribes (55 I.D. 14, 44 (1934)); limited on other grounds, 77 I.D. 49 (1970). However, the opinion emphasized that, while some generalizations can be made about what tribal powers have been recognized in the past, the powers of a particular tribe can only be ascertained by considering all legal authorities applicable to that tribe: ''My answer * * * then, will be general, and subject to correction for particular tribes in the light of * * * [any] treaties or statutes * * * restricting or enlarging the general authority of an Indian tribe.'' Memorandum Opinion, 55 I.D. 17–18.

[6] Thus, one author notes that tribal, state, and Federal environmental regulatory jurisdiction over natural resources development and other business activities, both on reservations and on other Indian lands, eludes precise definition because of the unique attributes of tribal sovereignty and the relationships between tribes and states, the Federal Government, and private business, as well as the lack of clear direction or standards of review from the courts. Walter E. Stern, *Environmental Compliance Considerations For Developers of Indian Lands,* 28 Land & Water L. Rev. 77, 78 (1993). The determination as to whether a tribe has a particular right, authority, or interest typically requires detailed analysis of complex factual and legal issues, and each analysis must stand on its own merits. Because of Indian tribes' ''anomalous'' status as ''not * * * possessed of the full attributes of sovereignty,'' courts struggle constantly with the extent to which inherent tribal powers remain, or alternatively, have been diminished as a result of Indian tribes' dependent status. *Id.,* 86.

Indian allotments are Indian country. By its terms, the definition relates only to federal criminal jurisdiction. It establishes the basis for asserting federal criminal jurisdiction over ''Indian country.'' However, it has been recognized as also generally applicable to questions of Federal civil jurisdiction. *See Alaska* v. *Native Village of Venetie Tribal Gov't,* 522 U.S. 520, 527 (1998) (''*Venetie*''); and *DeCoteau* v. *District County Court for Tenth Judicial Dist.,* 420 U.S. 425, 427, n. 2 (1975).

The U.S. Supreme Court has noted that allotments are parcels created out of a diminished Indian reservation and held in trust by the Federal Government for the benefit of individual Indians. *Venetie,* 522 U.S. 529. The court's decision stated that the original reservation in *Venetie* was Indian country ''simply because *it had been validly set apart for the use of the Indians as such, under the superintendence of the Government*'' [citing *United States* v. *Pelican,* 232 U.S. 442, at 449 (1914)] (emphasis in original). The decision then concluded that, after the reservation's diminishment, the allotments continued to be Indian country, as ''the lands remained Indian lands set apart for Indians under governmental care; * * * we are unable to find ground for the conclusion that they became other than Indian country through the distribution into separate holdings, the Government retaining control.'' *Id. Venetie* noted that the Supreme Court in numerous cases has relied on a finding of both a Federal set-aside [a setting apart of lands for Indians] and Federal superintendence in determining that Indian lands are Indian country, in order to confirm Federal jurisdiction over them. 522 U.S. 530. The court pointed out that ''[t]he federal set-aside requirement ensures that the land in question is occupied by an ''Indian community.'' 522 U.S. 531. The second requirement, of Federal superintendence, ''guarantees that the Indian community is sufficiently ''dependent'' on the Federal Government that the Federal Government and the Indians involved, rather than the states, are to exercise primary jurisdiction over the land in question. *Id.* The court found that the lands in question in *Venetie* were no longer superintended by the Federal Government. 522 U.S. 533.

The Tribe had contended that the requisite Federal superintendence was present because the Federal Government provides ''desperately needed health, social, welfare, and economic programs'' to the Tribe. The court rejected this argument, stating that ''health, education, and welfare benefits are merely forms of general federal aid; * * * they are not indicia of active Federal control over the Tribe's *land* sufficient to support a finding of Federal superintendence. 522 U.S. 534 (emphasis added). The court thus drew a distinction between providing government aid or service to Indians, on the one hand, and controlling land sufficient to establish superintendence of that land, on the other.

The Supreme Court has analyzed what is required for Federal ''superintendence'' of allotted lands for purposes of 18 U.S.C. 1151. *Venetie, supra.* We believe the logic of the *Venetie* analysis is applicable to evaluation of tribal supervision of lands under SMCRA 701(9). That is, analysis of whether a tribe supervises allotted lands under SMCRA should address not whether the tribe provides services or aid to the allottees, but rather whether the tribe supervises the allotted lands in question.

c. Why Is Further Information Needed?

The record does not clearly or persuasively establish whether or how any Navajo tribal authorities, rights, or functions, singly or cumulatively, constitute tribal supervision of Navajo allotted lands, in law or in fact, either as a result of tribal sovereignty or as a result of delegation from Congress. It is possible that, taken cumulatively, the Nation's rights, authority, or functions on tribal members' allotted lands may properly be deemed supervision of those lands in fact or in law, or both. Information relevant to analysis of tribal supervision in law might include, for example: Treaties, executive orders, Federal statutes, and Federal and tribal case law or tradition relevant to a tribe's interests in or authority over the allotted lands; and any other relevant requirements and programs of a tribe. Further, historical information about the allotted lands and tribal activities affecting the lands may indicate whether a tribe has supervised the allotted lands in fact. However, as discussed below, the record provides relatively little relevant and clearly persuasive information concerning whether the Navajo Nation supervises off-reservation allotted lands.

The 1995 Navajo Nation Code (NNC) does provide that it applies to allotted lands. The 1995 NNC provides that:

> The Territorial jurisdiction of the Navajo Nation shall extend to Navajo Indian Country, defined as all land within the exterior boundaries of the Navajo Indian Reservation or of the Eastern Navajo Agency, all land within the limits of dependent Navajo Indian communities, all Navajo Indian allotments, and all other land held in trust for, owned in fee by, or leased by the United States to the Navajo Tribe or any Band of Navajo Indians.

NNC Title 7, 254 (1995).

However, as discussed below, the record does not clearly establish what authorities or rights the Nation currently asserts in or on allotted lands in the consolidation area, what legal support there is for those authorities or rights, or what actions the Nation takes to implement those authorities or rights on allotted lands. It is not clear from the record before us on the proposed rule what questions, if any, there may be concerning the authority or rights of the Nation over off-reservation allotted lands. Equally importantly, it remains unclear whether or for what reasons any such authorities, rights, or actions should be deemed tribal supervision of allotted lands. And it is unclear whether the Navajo Nation asserts supervision in fact, in law, or both, over the allotted lands. Some of the programs and authorities the Nation asserts or had previously asserted it has on allotted lands, such as ''treatment as a state'' under the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), and authority to tax, are asserted by other commenters to be non-existent, unexercised, or too tangential or otherwise irrelevant to the issue of supervision of these lands for purposes of SMCRA. The record includes little or no current documentation or discussion of scope, purpose, effect, authority for, or implementation of these programs, or any others. We have found no judicial decisions or other authority that clearly establish the nature or extent of any Navajo Nation authority or rights over all Navajo allotments in the consolidation area. Thus, the record is inadequate to support a determination as to what supervision, if any, the Nation may have of the off-reservation allotted lands.

4. Is the Proposed Rule Appropriate in Scope? Is This Issue Likely To Be Raised for Other Allotted Lands in the Foreseeable Future?

We considered whether the specific question raised by the proposed rule would likely be raised for other lands in the future. A combination of unusual factors would be needed for this particular jurisdictional issue to arise; allotments would have to be outside the reservation, overlie coal reserves and be within a recognized Indian land consolidation area. We are not aware of any contemplated mining operations that would be likely to raise the issue in the foreseeable future.

Nonetheless, in the future it is possible that other tribal land consolidation areas could be approved that would include allotted lands and thus would be covered by the proposed rule. Under the proposed rule, those allotted lands would be deemed to be supervised by the tribe in question. However, we have no basis for determining at this time whether any such allotted lands would be supervised by a tribe. Such a determination would be particularly inappropriate in view of the fact that, as discussed *infra,* the Federal Government makes determinations about the authority of a particular tribe on particular lands on a case-by-case basis, based on consideration of all relevant law and facts concerning the tribe and lands in question.

5. What Procedural Concerns Does the Proposed Rule Raise?

For determinations in which witness expertise or personal knowledge may be critical, or in which evidentiary weight or credibility may be important, an administrative proceeding should afford interested persons the opportunity to present relevant and probative information or testimony and to comment or cross-examine as appropriate, and thus to address the weight and credence to be given to the record before the decision maker. For several reasons, we believe such opportunity may be particularly important concerning the issues in the proposed rule. The issues and facts in this matter are complex and contentious, and the accuracy and adequacy of a number of commenters' contentions has been called into question. The proposed rule would result in a change in regulatory primacy over Navajo allotted lands under SMCRA, and any such change might affect the responsibilities, funding, and costs of interested persons, including the State, the Navajo Nation, and the McKinley mine operator. Further, there is a paucity of relevant and dispositive documentation in the record before us. We anticipate that case-by-case determinations will provide all interested persons with ample notice and opportunity to participate, and thus will allow development of a more complete record and a more informed decision.

6. Is National Rulemaking Appropriate on This Matter?

Does this issue warrant a change in nationwide regulations? We do not think it does, for the reasons discussed above, and for the following reasons. Ordinarily, questions requiring national rulemaking involve issues that arise with some frequency and are of importance in multiple areas of the country. We know of only one instance where this issue has arisen—at the McKinley Mine in New Mexico. In the years that we have sought to address this issue, including the many months that it took to prepare the proposed rule and the more than eight years since the proposed rule was published, we have yet to learn of another instance where this jurisdictional issue is relevant. We do not believe that creating nationally applicable regulations to resolve a local and infrequently arising question is an appropriate use of the Federal regulatory process.

C. How Did We Evaluate the Record in Deciding What Action To Take on the Proposed Rule?

We reviewed the record before us to determine what relevant information has been provided. We considered both the relevance and significance under SMCRA of any alleged supervisory function, right, or authority.[7] For any asserted tribal supervisory function, right, or authority concerning allotted lands, we evaluated whether the record demonstrated that the Nation actually possesses the function, right, or authority (supervision in law),[8] and if so, whether the record demonstrated that the Nation actually exercises the function, right, or authority over the Navajo allotted lands (supervision in fact).[9] Further, we evaluated whether the record demonstrates, either individually or cumulatively, supervision of the allotted lands or activities affecting the allotted lands. Our review addressed the following factors, as well as any other relevant information in the record:

Established Tribal Authority Under Federal Law: Are the lands in question presumed or deemed as a matter of federal law or treaty to be subject to the tribe's sovereignty? For example, does the tribe have specific recognized authority over the allotted lands because of their status as Indian country? Or has the Federal Government delegated to the tribe or recognized in the tribe specific authority over the lands? Has the Federal Government delegated to the tribe authority over the lands by necessary implication? If so, does the record establish the nature or extent of the tribe's sovereignty or authority (as distinguished from Federal sovereignty) over these lands? And if so, have any significant and relevant aspects of tribal sovereignty or authority over these lands been ceded by treaty, removed by Federal statute, or otherwise divested or limited? Does the tribe exercise any such authority?

Land Use Regulation: Does the tribe have authority over land use on the allotted lands? Specifically, does the tribe have zoning or land use planning authority? Does the tribe have authority over building on the lands? Does the tribe have documented authority over grazing on allotted lands? Has the tribe adopted a building code, a land use plan, or zoning for the lands, or otherwise taken action to regulate use of the lands? Does the tribe supervise, or has the tribe historically supervised grazing on the allotted lands?

Taxation: What taxation authority or jurisdiction does the tribe have on the lands? For example, does the tribe have the authority to tax these lands or activities affecting these lands, or materials or profits from the lands?

Environmental Regulation: What environmental regulatory authority does the tribe have over or affecting the lands? For example, what authority if any, does the tribe have to regulate water use, water quality, or health and safety on the lands? What environmental regulatory requirements, if any, does the tribe actually apply on these lands?

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[7] The analysis of one author suggests some tribal functions or authorities that may constitute supervision of lands. That discussion notes that:

''[T]wo aspects of tribal sovereign authority crucial to mineral development [are] taxation and environmental regulation.

''Other police [regulatory] powers relevant to mineral development include the powers to regulate health and safety, building standards, water use, zoning, and labor.''

Judith V. Royster, *Mineral Development in Indian Country: The Evolution of Tribal Control Over Mineral Resources,* 29 Tulsa L.J. 541, 607 and n. 607 (1994) (Citations omitted).

[8] Supervision in law of allotted lands might be demonstrated by factors such as: specific authority or rights of the tribe to oversee, regulate, or superintend allotted lands that may amount to supervision of the lands (for example, whether the Navajo Nation has sovereignty over off-reservation allotments by virtue of the allotments' status as real property of the allottees); specific Navajo authority or rights on allotted lands because the lands are Indian country, in light of any Navajo sovereignty over its Indian country; tribal authority over individual allotments because of delegation from Congress, *e.g.*, under 28 U.S.C. 1151. Relevant information could include, for example, pertinent treaties, Federal statutes and executive orders, Federal case law, and tribal law and history or tradition, as well as discussion of how and why a tribe's sovereignty over or authority on the lands is or is not supervision in law of the lands.

[9] Supervision in fact might be demonstrated by information about specific ways in which the tribe actually functions to oversee, regulate, or superintend allotted lands (as contrasted, for example, with tribal programs that are primarily social services to the allottees). Relevant information could address actions a tribe has taken or is taking to adopt, administer, or enforce programs affecting use of allotted lands.

Public Works Authority: Does the tribe have relevant public works authority over the lands? Has the tribe done, authorized, or funded any relevant public works projects on the lands?

Other: Does the tribe have other functions, rights, or authorities on the allotted lands that establish ''supervision'' of the lands for purposes of SMCRA? For example, does the tribe have a sovereign interest in or congressionally delegated authority over the postmining uses of those lands? Or does the tribe have a sovereign interest in the potential effects of surface coal mining operations on the lands in question because of any potential effects on the health, safety, and welfare of tribal members, or on the economy of the tribe?

VI. What Does the Record Establish Concerning the Basis for the Proposed Rule?

In addition to our review of relevant materials, discussed above, the record includes numerous materials submitted by commenters, including both documentary submittals and other comments on the proposed rule. Our evaluation of these materials follows.

A. What Does the Record Establish Concerning Congress' Intent Regarding the Indian Lands Status of Indian Country?

The Navajo Nation asserts that SMCRA and its legislative history indicate that ''lands held in trust for or supervised by'' a tribe were intended by Congress to include Indian country. The Nation asserts that legislative history shows Congress' intent to prohibit state regulation of allotments.

New Mexico argues that Congress knew how to provide for Indian lands status over ''Indian Country'' if that is what Congress intended, but that they chose not to. The State asserts that it would be inappropriate to supply by rulemaking what Congress deliberately did not do itself. The State also asserts that nothing in the legislative history or the definition of ''Indian lands'' supports a conclusion that Congress intended allotments to be Indian lands.

NMA contends that Congress did not use the term ''Indian country,'' which had been defined in LUPA, because it did not intend the terms to be synonymous.

As noted earlier in this preamble, we have found no legislative history of SMCRA that clearly sets out Congress' intent on this issue. However, we believe the relevant LUPA legislative history (discussed above), considered with the analysis in *Venetie* of Indian country law under 18 U.S.C. 1151 (discussed above), suggest that allotted lands' status as Indian country may mean that a tribe has interests in those lands relevant to a case-by-case determination on tribal supervision of lands (for example, see the discussion of tribal authority to tax Indian country lands in *Pittsburg & Midway* v. *Watchman,* 52 F.3d 1531 (10th Cir, 1995) (''*Watchman*''), summarized *infra*).[10] As discussed above, we have found widespread variability among legal commentators and court decisions as to what interests and authority tribes may have or typically have in Indian country or on allotments. Therefore, a determination of tribal interests and authority necessarily must be made on a case-by-case basis looking at all identified relevant factors.

We are not persuaded by the arguments of New Mexico and NMA concerning the relevance of the legislative history of LUPA in interpreting SMCRA's Indian lands provisions. As discussed in *Valencia,* and in this preamble, SMCRA, the legislative history of SMCRA, and LUPA are consistent with a determination that allotted lands may be Indian lands, but do not compel a conclusion as to whether any specific allotted lands are in fact supervised by a tribe and therefore are Indian lands. Similarly, in light of our discussion of the LUPA legislative history, we do not find helpful the contention that Congress did not intend ''Indian country'' and ''Indian lands'' to be synonymous. Neither the proposed rule nor our decision not to adopt the proposed rule relies on a conclusion that the terms are synonymous.

[10] OSM recognizes that some authors make broad and general assertions. For example:

''In Indian country, Natives enjoy inherent sovereignty, i.e., the right of self-government and self-determination. Specifically, in Indian country, a tribal government has the following powers: to enact and impose taxes; to adopt and enforce its own internal tribal laws; * * * to issue marriage licenses; to buy and sell real property; to regulate land use; [and] to provide essential and non-essential governmental services. * * * [Stephen C. Pevar, *The Rights of Indians and Tribes* 16 (1992); Felix Cohen, *Handbook of Federal Indian Law* 246–57 (Rennard Strickland & Charles F. Wilkinson eds., 1982)]. Also in Indian country, * * * tribal governments enjoy the same sovereign immunity possessed by Federal and state governments. [*See* Pevar, *supra,* at 309 (citing *Oklahoma Tax Comm'n* v. *Citizen Band Potawatomi Indian Tribe,* 498 U.S. 505, 508 (1991); *Santa Clara Pueblo* v. *Martinez,* 436 U.S. 49, 58 (1978))]. They can be sued only if they consent or if they engage in acts beyond the scope of their authority. [*See id.*]''

Marilyn J. Ward Ford, *Indian Country and Inherent Tribal Authority: Will They Survive ANCSA?* 14 Alaska L. Rev. 443 (1997).

B. What Is the Legal Authority for the Proposed Rule?

1. What Is the Statutory Authority for the Proposed Rule?

P&M asserts that we do not have the statutory authority to adopt the proposed rule because the SMCRA definition of Indian lands does not include Indian allotment lands and urges that the proposed rule should be withdrawn on that ground.

We are not persuaded by this comment. We have the authority to interpret and apply by rule the applicable provisions of SMCRA concerning this issue. This authority is derived from a variety of SMCRA provisions, including sections 102(b) and (m), 201(c)(1), (2), and (13), 701(11), and 710(h).

2. What Are the Effects of the Judicial and Administrative Cases Cited by Commenters Concerning the Proposed Rule?

None of the judicial or administrative cases cited by commenters establishes whether or not the Navajo Nation supervises the allotted lands in question.

The Navajo Nation asserts that the courts and the IBLA have determined that allotted lands are Indian lands for purposes of SMCRA. Specifically, the Nation refers to the language in *Montana* v. *Clark* equating ''Indian lands'' with ''all lands in which the Indians have an interest'' (749 F.2d 740, 752 (DC Cir. 1984), *cert. denied,* 474 U.S. 919 (1985)), and the *Valencia* and *P&M* decisions, which referred to this *Montana* language. The Nation concludes that under the reasoning of these three decisions, all trust allotments are clearly ''Indian lands'' because they are lands in which Indians have an interest. The Nation also refers to the IBLA discussion in *Valencia* of the legislative history of LUPA, which the Nation asserts was a related bill. That legislative history defined the phrase ''all lands held in trust [for] or supervised by any Indian Tribe'' as, *inter alia,* ''lands which are Indian country for all practical purposes but which do not enjoy reservation status,'' and ''lands outside a reservation which [the Indian tribes] own or for which they possessed administrative responsibility.'' S. Rep. No. 197, 93d Cong., 1st Sess. 127 (1973), quoted in *Valencia Energy Co.,* 109 IBLA at 50. The Nation also argues that numerous cases concerning ''Indian country'' establish that allotments are Indian country, that Indian country defines the tribe's territorial jurisdiction, and that Indian country, including allotments,

defines the area of exclusive tribal and Federal authority. The cited cases include: *Oklahoma Tax Comm'n.* v. *Sac & Fox Nation,* 508 U.S. 114 (1993); *California* v. *Cabazon Band of Mission Indians,* 480 U.S. 202, 207 n.5 (1987); *DeCoteau* v. *District County Court for Tenth Judicial Dist.,* 420 U.S. 425, 427 n.2 and 445–446 (1975); and *McClanahan* v. *Arizona State Tax Comm'n,* 411 U.S. 164, 169 and n.4 (1973).

We do not agree that the courts have determined that allotted lands are Indian lands under SMCRA. Further, the record does not establish that LUPA was related to SMCRA. Rather, as the *Valencia* decision indicates, LUPA was considered at the same time, by the same congressional committee, and used the same terminology (see preceding discussions of LUPA legislative history). However, the definition used by Congress in 1973 for LUPA is consistent with our conclusion that allotted lands, as Indian country, may be supervised by a tribe for two related reasons. First, allotted lands are Indian country and under *Venetie* and *Watchman* the Nation has some degree of authority over Indian country, including allotments. Second, although it is not clear on the record before us what relevant authority the Nation does have on allotted lands, a tribe with authority over allotted lands may have some function, right, or authority to superintend, regulate, or oversee the lands. Some of the cases cited by the Nation do not concern the territorial jurisdiction of the Nation, but rather the jurisdiction of another tribe. Other cases cited by the Nation do not address the authority held by all tribes in Indian country, but rather the authority of the Federal Government in Indian country.

The Navajo Nation asserts that the Energy Policy Act of 1992 (EPACT) confirms Congress's understanding that allotments are ''Indian lands'' under SMCRA because Title XXVI of EPACT authorizes grants to tribes to develop, administer, and enforce ''tribal laws and regulations governing the development of energy resources on Indian reservations'' [citing 25 U.S.C. 3504(a)]. The Nation notes that, for purposes of this provision, the definition of ''Indian reservation'' on which tribes may regulate, specifically includes off-reservation, or ''public domain,'' Indian allotments. 25 U.S.C. 3501(2). The Navajo Nation also asserts that EPAct and SMCRA should be read harmoniously.

We do not agree that the Energy Policy Act confirms Congress' understanding that allotments are ''Indian lands'' under SMCRA. Although the authorizing provisions and definition cited by the Nation are found in legislation that also amends SMCRA, as noted above the provisions themselves do not concern SMCRA, but rather 25 U.S.C. 3504.[11] Therefore, we see no compelling argument why these provisions of EPACT and SMCRA should be read harmoniously, particularly since they were enacted 15 years apart, and to achieve different purposes. In fact, the very definition the Nation cites defeats the Nation's argument because ''reservation'' clearly does not mean the same thing under SMCRA that it is defined to mean under EPACT. As the Nation's comment recognizes, the definition of ''Indian reservation'' in EPACT includes off-reservation allotments. By contrast, the SMCRA definition of ''Indian lands'' includes lands within Federal Indian reservations *and* lands held in trust for or supervised by an Indian tribe. Thus, SMCRA recognizes that off-reservation Indian lands (including any allotments that qualify) are not deemed reservation lands for purposes of SMCRA.

The State notes that a 1987 decision in *The Pittsburg and Midway Coal Mining Co.* v. *OSM* specifically quoted a Senate Report that stated that ''[t]he conference report limits the definition [of Indian lands] to lands within the external boundaries of a Federal Indian reservation and to all other lands, including mineral interests, held in trust by the Federal Government for any tribe.'' *The Pittsburg and Midway Coal Mining Co.* v. *OSM,* at 11, No. TU 6–2–PR, United States Dept. of the Interior, Office of Hearings and Appeals (1987) (''1987 *Pittsburg* ALJ decision'') [citing Senate Report No. 94–101 at 85–86 (1975)]. The State further notes that the ALJ in that case concluded that OSM arguably exceeded its statutory authority when its 1984 Indian lands rules purported to regulate as ''Indian lands'' those off-reservation lands held in trust for or supervised by *individual* Indians. 1987 *Pittsburg* ALJ Decision at 11 [citing 49 F. R. 38463 (September 28,1984)]. The State points out that the ALJ concluded that OSM's subsequent change of position on this issue had comported with the statutory definition of Indian lands and the legislative history of SMCRA. 1987 *Pittsburg* ALJ Decision at 12.

This comment by the State is inapposite for several reasons and, therefore, we do not find it persuasive. First, this ALJ decision on this issue was overturned by the Interior Board of Land Appeals (IBLA) on appeal and remanded for a hearing and decision on the merits. *The Pittsburg and Midway Coal Mining Co.* v. *OSM, and Navajo Tribe of Indians,* 115 IBLA 148, 160 (1990). Second, the cited ALJ decision language addressed OSM's earlier regulatory language that would have treated as Indian lands all lands held in trust for or supervised by individual Indians. The 1999 proposed Indian lands rule, and this decision not to adopt the proposed rule, would not have this effect. Rather, the proposed rule and this decision address whether, under SMCRA, we deem specific categories of allotted lands to be supervised by a tribe. The IBLA emphasized in its 1990 decision overturning the ALJ's opinion that allotted lands may be regarded as ''Indian lands'' if they are held in trust for or supervised by an Indian tribe.

The State asserts that the proposed rule does not accurately reflect the decision in Valencia. The State alleges that the proposed rule relies on *Valencia* for the proposition that ''Indian lands'' under SMCRA include ''Indian country.'' The State asserts that Valencia actually found that the definition of ''Indian country'' was not relevant to its inquiry in that matter, and quotes a passage from *Valencia*:

> Thus, the fact that the land may not be 'Indian country' for the purposes of state criminal jurisdiction is simply irrelevant to the question of whether these lands are properly deemed 'Indian lands' for the purposes of SMCRA.

Valencia, 109 IBLA at 67 (1989).

We do not agree. *Valencia* does not conclude that the definition of ''Indian country'' is irrelevant to whether lands that are Indian country are ''Indian lands'' under SMCRA. This comment by the State misreads the language of the proposed rulemaking, and, in quoting a brief portion of *Valencia* out of context, mischaracterizes that decision. Further, as discussed below, the proposed rulemaking did not rely on *Valencia* for the proposition that Indian lands under SMCRA include Indian country. Rather, the proposed rulemaking identified several possible bases for determining that allotted lands are ''Indian lands,'' but did not say that we relied on any of those possible bases.

The 1999 proposed rule discussion suggested that one of the possible bases

[11] Section 3504 was added by the Energy Policy Act of 1992 to Title 25 U.S.C., Indians, in a new Chapter on Indian Energy Resources. Section 3504 authorized grants to tribes for development and implementation of tribal programs for development of energy resources, in general. Section 3504 authorized grants from 1994 to 1997, as well as technical assistance and training from the Department of the Interior and the Department of Energy. Pub. L. No. 102–486, § 2604, 106 Stat. 2776, 3114 (1992).

would be a two-part determination: first, that Congress intended the reference to lands ''supervised by'' an Indian tribe in the SMCRA definition of ''Indian lands'' to include lands encompassed by the term ''Indian country;'' and second, a determination that allotted lands are Indian country. The proposed rule discussion noted that *OSM* had taken the position that Congress intended the phrase ''lands * * * supervised by'' an Indian tribe to include lands encompassed by ''Indian country'' [citing *Valencia,* 109 IBLA 59 (1989)]. The proposed rule referred to our *Valencia* brief discussing the LUPA legislative history of the phrase ''supervised by an Indian tribe.'' That legislative history says Congress intended the phrase to cover ''lands which are Indian Country for all practical purposes but which do not enjoy reservation status.'' S. Rep. 93–197, 127 (1973). In our *Valencia* brief we asserted that Congress must have intended the same terms (''supervised by'') and the almost identical definitions of ''Indian lands'' to have the same interpretation, as discussed in the LUPA legislative history. The proposed rule points out that the IBLA affirmed our analysis at 109 IBLA 60; and that the IBLA's decision was upheld on appeal.

Valencia does not support the State's comment that the ''Indian country'' definition is irrelevant to an Indian lands determination. Rather, the statement referred to by the State occurs in the IBLA's analysis of an altogether different issue. The IBLA was discussing the argument by the State and the mine operator that assertion of OSM jurisdiction over tribal *fee* lands would conflict with Congress' intent to avoid altering the jurisdictional status quo.[12] The IBLA determined that tribal fee land must be ''Indian land'' under SMCRA and that the fact that tribal fee land may not be ''Indian country'' for purposes of state criminal jurisdiction is irrelevant to whether the lands are ''Indian lands'' under SMCRA. *Id.* Thus, in effect the IBLA held that if lands meet the SMCRA definition they will be deemed ''Indian lands'' for purposes of SMCRA, even if they have been found *not* to meet the definition of ''Indian country'' for other purposes.

The State also argues that the settlement agreement reached in *Mescal* v. *United States of America* underscored the State's conclusion that allotments are not supervised by a tribe [citing *Mescal* v. *United States of America,* No. Civ. 83–1408 (D.N.M.)]. The State asserts that the settlement establishes that allottees own the beneficial title to minerals underlying their allotments. The State asserts that *Mescal* supports its position that allotments are owned by individual Indians and the United States Government, not by the Tribe, and are not tribal land.

We find these arguments inapposite and unpersuasive for several reasons. First, and most importantly, tribal title to lands is not required in all cases under the SMCRA definition of ''Indian lands.'' Rather, tribal supervision is the relevant prerequisite; and in some cases allottee ownership might be concomitant with tribal supervision of the lands. Second, the settlement agreement did not confer on allottees present title to the coal underlying the allotments. Rather, the Federal Government continued to hold title to the coal until the end of existing coal leases, but BLM records would give constructive notice of allottees' beneficial title to the minerals. The agreement provides for transfer of mineral title to the allottees at a later date, upon the expiration of existing Federal coal leases. Thus, the agreement did not change vested record title in the leased Mescal lands. Third, settlement agreements and consent decrees, by their very nature, have no precedential effect. Rather, they are binding between the parties to the agreement concerning the matters addressed in the agreement.[13]

The State also refers to another line of cases that it contends established the State's regulatory authority over allotments, and allowed the State's regulatory authority over all of South McKinley mine to remain in place: *New Mexico* v. *United States,* Civ. No. 84–3572 (D.D.C. 1984) and the 1987 settlement agreement with the Navajo Nation in *New Mexico* v. *Navajo Tribe of Indians,* No. Civ. 87–1108. The State asserts that it and Pittsburg and Midway ''have, for over a decade, relied on that state of affairs, have stabilized regulation of South mine, and have adapted to the regulatory scheme in place.'' The State asserts that to require changes in regulation and bond release standards would be unfair, unwise, and contrary to law. Similarly, the National Mining Association (NMA) asserts that the proposed rule is inconsistent with the settlement agreement reached between OSM and NMA's predecessor organizations (the National Coal Association and the American Mining Congress) in companion litigation, *NCA* v. *United States Dep't of the Interior,* Civ. No. 84–3586 (D.D.C.).

We do not agree. Neither our commitments in the settlement agreements nor our 1989 clarifying rulemaking excluded Navajo allotted lands from consideration as to whether the tribe supervised them, or from the definition of Indian lands. Thus, the settlements could not preserve the State's regulatory authority over allotments, if those allotments are found to be Indian lands, because, as discussed above, SMCRA does not authorize state regulatory jurisdiction over Indian lands. The litigation was started by the State's challenge to our assertion of exclusive regulatory authority over Indian lands under the 1984 Indian lands regulations. The preamble to those regulations included ''inadvertent and unintentional'' language that, in relevant part, asserted that we would ''continue to regulate as Indian lands *allotted lands,* and all lands where either the surface or minerals are held in trust for or supervised by an Indian tribe *or individual Indians*.'' 49 FR 38463 (1984) (emphasis added). The Navajo Nation intervened as of right in that litigation and filed a counterclaim requesting a declaratory judgment that certain lands in New Mexico are ''Indian lands.'' Subsequently the National Coal Association and the American Mining Congress also intervened. The parties other than the Nation reached settlement. The State agreed that it would not contest the position of the Secretary of the Interior ''that he is the exclusive regulatory authority with respect to surface coal mining operations on Indian lands within the State.'' We agreed to issue a statement concerning the preamble to the final Indian lands rule clarifying that the ''Secretary does not consider individual Indian allotted lands outside the exterior boundaries of the Indian reservation to be included in the definition of 'Indian lands.' '' The trial court ordered the plaintiffs' actions dismissed; but the counterclaim of the Tribe was unaffected. *New Mexico* v. *United States Dep't of the Interior,* No. 84–3572 (D.D.C. August 6, 1985), *aff'd. New Mexico ex rel. Energy and Minerals*

[12] The IBLA rejected both this argument and the underlying assumption that a parcel subject to a state's general regulatory or police powers before SMCRA's enactment, must also be subject to the state's regulatory authority under SMCRA. 109 IBLA 66. The IBLA rejected the argument because SMCRA itself is an assertion of Federal authority under the Commerce Clause to regulate all surface coal mining activities in states, and SMCRA allows state primacy only on non-Indian and non-Federal lands—thereby *establishing* the jurisdictional status quo for SMCRA purposes. *Id.* The IBLA noted that state inability to regulate Indian lands under SMCRA does not affect exercise of state jurisdiction under other authority. 109 IBLA 67.

[13] *See, e.g.,* 18 *Moore's Federal Practice* § 131.13[2], 134.01 (3d ed. 2004); and Wright, Miller & Cooper, *Federal Practice and Procedure:* Jurisdiction § 4443 (2d ed. 2002).

Dep't v. *United States Dep't of the Interior,* 820 F.2d 441 (DC Cir. 1987). In 1988, the Department published a proposed rule correcting its statement in the 1984 Indian lands rule preamble. In 1989, the Department published a final rule stating that, ''for purposes of surface coal mining regulatory jurisdiction, off-reservation allotted lands are include [sic] in the SMCRA definition of Indian lands only if an interest in the surface or mineral estate is held in trust for or supervised by an Indian tribe.'' 54 FR 22184 (May 22, 1989).

As the IBLA has pointed out, all that the settlement [and the Department's 1989 final rule clarifying its policy] on the Indian lands status of allotted lands decided was that lands cannot be considered Indian lands simply because they are allotted to individual Indians, as had been asserted in the 1984 Indian lands preamble. *Pittsburg & Midway Coal Mining Co.* v. *OSM,* 115 IBLA 148, 161 (1990), *aff'd Pittsburg & Midway Coal Mining Co.* v. *Babbitt,* Civ. 90–730 (D.N.M. 1994).

Likewise, the settlement agreement between the Navajo Nation and the State (which could not bind OSM in any case) did not purport to address the Indian lands status of off-reservation allotted lands. The State filed a motion to dismiss the Tribe's counterclaim on the 1984 rule for lack of jurisdiction, arguing that, under SMCRA section 520, the claim must be brought only in the judicial district in which ''the surface coal mining operation complained of is located.'' In November, 1985, the district court dismissed the Tribe's counterclaim. On appeal, the DC circuit vacated the district court's order denying the Tribe's counterclaim and instructed the district court to transfer the counterclaim to the United States District Court for the District of New Mexico. *New Mexico ex rel. Energy and Minerals Dep't* v. *United States Dep't of the Interior,* 820 F.2d 441 (D.C. Cir. 1987). The transferred litigation was settled and approved by consent decree. *New Mexico ex rel. Energy, Minerals and Natural Resources Dep't* v. *Navajo Tribe,* No. Civ. 87–1108 (D.N.M. 1992). The settlement agreed that specified reservation and tribal trust lands are ''Indian lands,'' and that other lands may constitute ''Indian lands.'' The Tribe and the State did not waive their respective positions as to the ''Indian lands'' status under SMCRA of any lands not listed in the settlement. In summary, neither settlement agreement established State regulatory authority under SMCRA over allotments, and neither agreement could preserve State regulatory authority over allotments found to be Indian lands; and neither the State nor Pittsburg & Midway could reasonably rely on the settlements to preclude our proper evaluation of the Indian lands status of allotted lands.

C. What Does the Record Establish as to Supervision by a Tribe of Individual Indian Trust Allotments in Approved Tribal Land Consolidation Areas?

Neither the comments, nor the other documentation in the record, separately or cumulatively, clearly confirms whether any Nation programs or authorities amount to supervision of specific allotted lands or of all allotted lands in the consolidation area. As discussed below, we decline to take administrative notice of materials not submitted. In any case-by-case determination, commenters may provide information as to whether any programs of the Navajo Nation constitute supervision of the allotted lands.

The Navajo Nation asserts that the Nation does in fact supervise allotted lands within the Navajo consolidation area. The Nation asserts that Navajo supervision over Navajo trust allotments is conclusively presumed, and clear. However, the Nation cites to no authority for this specific presumption. The Nation lists certain Navajo Nation ordinances and other provisions that it maintains the Nation applies and implements on allotted lands. For example, the Nation asserts that, pursuant to the Navajo Nation Code (''NNC''), the Nation applies to allotments its laws regarding the following: Agriculture and livestock, protection of the environment, regulation of commerce and trade, community development, courts and procedures, domestic relations, education, elections, fiscal matters, health and welfare, motor vehicle code, labor, land, law and order, mines and minerals, parks and monuments, professions and occupations, public utilities and communications, water, conservation, wildlife, and taxation. The Navajo Nation requests that we take administrative notice of the Navajo Nation Code and its laws.

The Nation asserts that, in *Pittsburg & Midway Coal Mining Co.* v. *Saunders*, No. Civ. 86–1442 M (D.N.M. 1988), *rev'd on other grounds*, 909 F.2d 1387 (11th Cir.), *cert. denied*, 498 U.S. 1012 (1990), *decision after remand*, 52 F.3d 1531 (10th Cir 1995), the district court examined a 1.9 million acre area that includes all of the P&M South McKinley Mine as well as several thousand Navajo trust allotments and found that the Nation provides to Navajos in that area a variety of services, including community services, health, education, and water resources; and that the Nation provides law enforcement and hears the vast majority of civil and criminal disputes in the Tribal Court. The Nation references the Nation's criminal jurisdiction over allotted lands, through the Navajo Tribal Court of Indian Offences; and provides copies of affidavits submitted in *Saunders*, concerning Navajo governmental authority and activity on allotted lands in such matters as demographics, land consolidation, education services, social services, health services, police services, cultural resources protection and ethnography, and (for the McKinley Mine permit area) land status and social services. The Nation also submitted a copy of a 1984 memorandum from a Department of the Interior Administrative Law Judge (ALJ) in a probate proceeding involving certain Navajo allotments. The memorandum discusses the applicability of the escheat provision of the Indian Land Consolidation Act (the Act was subsequently held unconstitutional). That memorandum found that the Tribe ''exercises civil governmental powers over the [allotted] lands'' [in the Eastern Navajo Agency] involved in the proceeding.

We conclude that neither the Nation's comments, nor the affidavits, nor the 1984 ALJ memorandum, separately or cumulatively, clearly confirms any Nation programs or authorities as demonstrating supervision of specific allotted lands or of all allotted lands in the consolidation area. And, for the reasons outlined below, we decline to take administrative notice of the other materials referenced by the Navajo Nation.[14] In the cited *Pittsburg & Midway* decision, the issue before the court was whether the P&M South McKinley mine is on the Navajo Reservation or in Indian country, so that the court was required to abstain from exercising jurisdiction over P&M's challenge to the Navajo Nation's tax on P&M's coal mining activities. Thus, only the status of the McKinley mine lands was at issue. The decision stated that the Tribe provided services in the area to allottees, including community development, child development, social services, health, education, youth

[14] As discussed below, we anticipate that, in any case-by-case determination, the Nation may provide information about any programs that constitute supervision in fact or in law of the allotted lands; i.e., overseeing, regulating, or superintending the allotted lands or activities affecting the lands (as contrasted, for example, to programs that constitute general social services to allottees). In such a proceeding, the Nation may also request administrative notice of relevant materials, as appropriate.

development, and water resources, and law enforcement. The decision discusses the role of the Nation in Navajos' lives in the area. However, the decision does not discuss how or why any tribal authority, program, or service concerns allotted lands in particular, or amounts to supervision of those allotted lands. Further, the decision does not discuss any programs or services in such detail as to support a conclusion as to whether they amount to supervision of the allotted lands.

The affidavits submitted by the Nation concern primarily the provision of various types of social services, and tribal acquisition of title, as well as the importance of off-reservation cultural resources to the Nation. The 1986 Elwood affidavit asserts that, at the time of the affidavit, the Nation regulated grazing on lands in the 1908 extension of the Navajo Nation in New Mexico, including BLM and BIA lands, tribal trust lands, tribal fee lands, and allotted lands, pursuant to a cooperative agreement. We believe the affidavit refers to a February 8, 1965 memorandum of understanding (MOU) among the Navajo Nation, BIA, and BLM concerning grazing administration of the Eastern Navajo Agency Administration Area. That MOU subsequently has been extended by amendment, most recently in January, 2003. The affidavit does not specifically assert that the Nation has independent authority to regulate grazing on allotted lands, outside of any authority delegated by BIA or BLM under the cooperative agreement. The Elwood affidavit does assert that the predominant use of lands within Navajo Indian country is for grazing by Navajo livestock. We have reviewed the January, 2003 extension of the February 8, 1965 MOU. The MOU specifies that there are three groups of Indian grazing communities, designated by District, in the Eastern Navajo Agency. However, Section III.E. of the January, 2003 extension specifically provides that, ''Individual Indian trust patent allotments and Navajo ranches shall not come under the administrative jurisdiction of the cooperative agreement as approved.'' Thus, the memorandum of understanding does not apply to Indian allotted lands. However, the holders of an allotment may voluntarily authorize regulation of grazing by BIA. Within the Eastern Navajo Agency, there are roughly 4,500 allotments. These allotments comprise the majority of the Navajo allotments within the approved tribal land consolidation area. Of those allotments, the necessary authorization for regulation by BIA has been given for roughly 1000 allotments. For those allotments for which BIA is authorized to regulate grazing, BIA issues grazing permits. However, we have found no information in the administrative record confirming that the Navajo Nation regulates grazing on allotted lands.

The 1984 ALJ memorandum discusses whether, for purposes of the applicable statutory criterion, those trust or restricted lands at issue were subjected to the Navajo Nation's jurisdiction. It states that ''the Tribe asserts general subject matter jurisdiction'' in the Eastern Navajo Agency, but specifically confirms only that ''the Tribe, BIA, and IHS [Indian Health Service] provide law enforcement, health, education, and social services'' in the Eastern Navajo Agency. Thus, the categories of programs confirmed are apparently services to individual Navajo; and the memorandum does not differentiate between the roles of the Nation and those of BIA and IHS.

New Mexico's comments concerning the Nation's assertions about supervision of grazing, state status under SDWA, and power to tax, are discussed below. New Mexico asserts that the other functions and authorities which the Nation maintains it has on allotted lands concern very limited and general supervision. The State did not list those functions and authorities. The State asserts that those references are unpersuasive where Congress has not specifically applied SMCRA to mining on allotments.

As discussed above, we conclude that the record before us is not adequate to support a conclusion as to whether the Nation's functions and authorities constitute supervision of the relevant allotted lands. Further, we conclude that this issue may be properly addressed in case-by-case determinations. Any such determination can address whether the Nation supervises particular allotted lands in view of any specific relevant Tribal programs or authorities.

Both New Mexico and NMA comment in effect that the Nation does not supervise allotted lands if the Nation's alleged supervisory functions or roles do not pertain to SMCRA or surface coal mining operations. New Mexico asserts that references in the proposed rule to incidental supervision on topics that have nothing to do with mining do not establish supervision over mining. NMA maintains that the authority to tax bears little relationship to supervision of lands within the context of SMCRA.

We do not agree. We believe these comments mistake the issue. The definition of ''Indian lands'' does not require that a tribe's supervision must directly pertain specifically to SMCRA program implementation or to surface coal mining operations. Rather, the definition simply requires that a tribe supervise the lands, as discussed above. And, as discussed above and in *Valencia*, supervision may exist as a matter of fact or as a matter of law; and jurisdiction or control over mining is not required. Thus *Valencia* found that, because the Nation owned the surface in fee, the Nation supervised the lands at issue in that case as a matter of law, even though the Nation had leased the coal rights. 109 IBLA 66. Further, *Valencia* emphasizes the Tribe's continuing interest in the postmining condition and use of lands as relevant to evaluation of tribal supervision under SMCRA. *Id.* We do not agree that authority to tax lands or what is done on or produced from lands necessarily bears little relationship to supervision of lands. Rather, taxation of land or activities on land, or of materials harvested from land, may be an aspect of supervision of the lands. For example, such taxation may be authorized because of a government's authority over the lands; and may be a means of regulating or controlling what is done on the lands, or a source of funding for such regulation.

Regarding specific categories of alleged Tribal supervision, we received the following comments:

The Navajo Nation asserts that it supervises grazing on allotted lands outside the reservation. New Mexico asserts that the reference to grazing is not compelling because the allotments are not being grazed, but rather are being mined. NMA asserts that the Nation is not supervising grazing on allotted lands outside the reservation.

The record does not demonstrate whether any allotted lands outside the reservation are grazing lands. Further, the record does not demonstrate whether or when those lands have been grazed. Likewise, the record is unclear as to whether the Navajo Nation has authority to supervise grazing on off-reservation allotted lands, or does supervise any grazing on such lands. And finally, the record does not conclusively demonstrate whether the Nation has an interest in or authority over the pre-mining and post-mining use of the allotted lands, and thus has authority to supervise such grazing as a matter of law, whether or not it supervises grazing as a matter of fact. A case-by-case determination may address all of these questions.

The Navajo Nation asserts that they have ''state'' status for purposes of implementing the Safe Drinking Water

Act (SDWA) on off-reservation allotted lands. However, they cite no authority for this proposition. New Mexico asserts that, for off-reservation lands, the Navajo Nation is not treated as a state under the SDWA, having withdrawn its request for treatment as a state outside its reservation. In support of this contention, the State cites a letter dated August 9, 1991 from H. Seraydarian, USEPA Region IX, to New Mexico Governor King. However, our records indicate the State did not attach a copy of that letter.

We find that the record contains no dispositive documentation or authority as to whether the Navajo Nation has ''state'' status for purposes of implementing the SDWA on allotted lands. In any case-by-case determination, interested persons may provide documentation to support any relevant assertions on this topic.

NMA asserts that the Navajo Nation's authority to regulate under the SDWA could not have been contemplated by Congress during its consideration of SMCRA because the Navajo Nation's treatment as a state did not occur until after 1986. We find this assertion unpersuasive. SMCRA does not require that only supervision of lands under statutes that existed as of the date of enactment of SMCRA may be considered; and nothing in SMCRA or its legislative history supports such a conclusion. If Congress had intended such a result, it could have inserted specific language to that effect in SMCRA.

Citing 56 FR 64876 (December 12, 1991), NMA asserts that the Navajo Nation does not have ''state'' status under the Clean Water Act on off-reservation allotted lands; only on reservation lands. NMA also asserts that, to make a fair determination of regulatory authority on off-reservation allotted lands, we must look at all types of regulatory authority over the lands, and consider the entities that exercise the authority, rather than the few unrepresentative examples of authority given in the proposed rule preamble. For the following reasons, we find these comments not helpful. The referenced 1991 USEPA rulemaking concerns interpretation of a particular Federal statute not at issue in this rulemaking. We have found no relevance of the 1991 USEPA rulemaking to this rulemaking, and no relevance to this rulemaking has been asserted by commenters. A reference to an unrelated statute under which a tribe does not supervise lands is not germane. Further, we do not agree that we must inventory all possible authorities under which any entity might possibly regulate or otherwise supervise allotted lands, in order to make a determination as to whether a tribe supervises those lands. It is doubtful whether such an inventory is possible. But in any case, nothing in SMCRA compels or authorizes a comprehensive determination of the nature, extent, or focus of all such authority over allotted lands. And even if such an inventory were feasible, it would serve no purpose: as noted above, SMCRA does not require that a tribe exercise more authority or supervision of lands than does a state or the Federal Government; nor does SMCRA require exclusive tribal supervision. SMCRA requires only that a tribe supervise the lands.

Citing *Pittsburg & Midway Coal Mining Co.* v. *Watchman*, 52 F.3d 1531 (10th Cir. 1995) (''*Watchman*''),[15] the Navajo Nation asserts that the Tenth Circuit has confirmed the Nation's authority to tax mining on trust allotments. The Nation characterizes this authority as the potentially most intrusive type of regulatory jurisdiction—''the power to tax involves the power to destroy.'' New Mexico asserts that the Navajo Nation does not tax allotted lands.

We conclude that *Watchman* does not unequivocally establish whether the Nation has the authority to impose a business tax on coal mining of all relevant allotted lands. However, because this decision provides potentially relevant or instructive discussion of a number of issues, we have evaluated it in some detail. In *Watchman,* Pittsburg & Midway Mining Co. (''P&M'') sought an injunction and declaratory judgment that the Navajo Nation lacked jurisdiction to impose a tax on P&M's mining activities on the off-reservation portion of McKinley mine, the ''South McKinley Mine.'' The Navajo Nation asserted that the Federal court should abstain based on the tribal abstention doctrine, and allow the Navajo tribal court to hear the issue first. Among other arguments, the Nation argued that the South McKinley mine area is Indian country within the meaning of 18 U.S.C. 1151. In relevant part, that provision reads as follows:

18 U.S.C. 1151. Indian country defined

Except as otherwise provided in sections 1154 and 1156 of this title, the term ''Indian country'', as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

The district court refused to dismiss P&M's complaint for failure to exhaust tribal remedies, holding that the area was not Indian country. The appellate court reversed that holding, and remanded for further findings by the district court, concerning whether the entire South McKinley Mine permit area is a dependent Indian community (and therefore, Indian country). The appellate court noted that P&M challenged the Navajo Nation's taxing authority, which was a basic attribute of its sovereignty. 52 F.3d 1531, 1538. The appellate court concluded that:

> The power to tax is an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management. * * * It derives from the Tribe's general authority, as sovereign, to control economic activity within its jurisdiction, and to defray the cost of providing governmental services by requiring contributions from persons or enterprises engaged in economic activities within that jurisdiction.* * * [T]he power to tax is a sufficiently essential aspect of sovereignty to require P&M to initiate its jurisdictional challenge in Navajo tribal court.
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> * * * * *
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> P&M's lawsuit presents a direct challenge to the Navajo Nation's jurisdiction and involves the interpretation of *Navajo law.* * * * A myriad of legal and factual sources must be consulted to resolve the complicated and intertwined issues implicated in cases like this one.
>
> The existence and extent of a tribal court's jurisdiction will require a careful examination of tribal sovereignty, the extent to which that sovereignty has been altered, divested, or diminished, as well as a detailed study of relevant statutes, Executive Branch policy as embodied in treaties and elsewhere, and administrative or judicial decisions. Resolution of these issues also requires close examination of the historical and present-day status of the area in question.

Id. (Citations omitted; emphasis added).

The appellate decision notes P&M's arguments that the tribal abstention doctrine should not apply because the attempt to tax is patently violative of express jurisdictional prohibitions, and that the Tribe has no authority to regulate non-Indian activities on non-Indian lands. The court did not elaborate on these arguments, and disagreed:

[15] *Watchman* was a supplemental opinion related to *Pittsburg & Midway Coal Mining Co.* v. *Yazzie,* 909 F.2d 1387 (10th Cir. 1990) (*see* note 3, *supra.*), *cert. denied, Navajo Tax Com.* v. *Pittsburg & Midway Coal Mining Co.,* 498 U.S. 1012 (1990).

P&M is correct that the Navajo Nation as a dependent sovereign lacks the inherent authority of a full-fledged sovereign. * * * Nonetheless, * * * *[t]he question is not whether the Navajo Nation possesses inherent authority as a sovereign to tax P&M, but whether 18 U.S.C. 1151 is a Congressional delegation of this authority throughout Indian country.*

52 F.3d 1531, 1540 (emphasis added). The Court continued:

We hold § 1151 represents an express Congressional delegation of civil authority over Indian country to the tribes. As a result, the Navajo Nation has authority to tax any mining activities taking place in Indian country without violating any express jurisdictional prohibitions.

52 F.3d 1531, 1541 (Citations omitted; emphasis added). The Court did not elaborate as to what civil authority over Indian country Congress had delegated to tribes. Nonetheless, the court concluded that it was not clear whether the area within the South McKinley Mine that was not allotted lands is Indian country. The court also concluded that, if the South McKinley non-allotted lands are not Indian country, then the allotted lands within the mine did not sufficiently implicate Indian sovereignty or other important interests of the Nation, and thus tribal abstention is not required. 52 F.3d 1531, 1542. In a footnote, the court specifically alluded to the authority of the Navajo Nation to tax on allotted lands. The court noted that

Of course, if the entire mine was located on Navajo trust allotments, there would be no question about the doctrine's applicability.* * * [W]e believe the Navajo Nation has the authority to apply its Business Activities Tax to the source gains from the 47% portion of the South McKinley Mine that lies within the individual Navajo trust allotments.

52 F.3d 1531, 1542 n.11. However, the court also recognized that the Nation's authority over allotted lands was not at issue in the case. Therefore, this footnote appears to be dictum. In fact, it may be doubly dictum, because the basic holding of the case was that the issue of jurisdiction or authority to impose the tax should be decided in the first instance by the tribal court.[16] Thus, it does not appear that the decision holds what the Nation asserts it holds. We expect that, in any case-by-case determination, interested persons may provide information on whether the Nation has relevant authority to tax on off-reservation allotted lands. That information may address whether the circuit court's statement in *Watchman* that the Nation has the authority is binding precedent or is dictum; if it is dictum, whether it should be given weight as persuasive; and whether a tribal court has ruled on the issue. Interested persons might also address whether the *Watchman* jurisdictional challenge was pursued in Tribal court.

None of the other cases on tribal authority to tax allotted lands cited by the Nation concerning the authorities of other tribes establishes that all tribes have taxing authority on all members' allotted lands. Likewise, none of those cases establishes that the Navajo Nation has taxation authority over all Navajo allotted lands.

P&M maintains that whether the Navajo Nation supervises off-reservation Indian allotments under SMCRA is a mixed question of fact and law. P&M asserts that dictionaries ''consistently define the word 'supervise' to mean; 'to have general oversight over, to superintend or to inspect' ''; and ''define superintend to mean; 'to have charge and direction of; to direct the course of and oversee the details; to regulate with authority; to manage; to oversee with the power of direction; to take care of with authority.' '' P&M asserts that therefore it is clear that supervision requires the power of direction or authority to control or manage. P&M cites no specific authority for these assertions.

New Mexico asserts that supervision does not equate to jurisdiction. The comment offered an example of a definition for each of the two terms, noting that jurisdiction ''is the authority by which courts and judicial officers take cognizance of and decide cases;'' and that supervision connotes an element of management. New Mexico also effectively asserts that ''Indian country'' is a jurisdictional term and does not equate to supervision.

As we discuss above, we agree that supervision may be supervision in law or supervision in fact, or both. However, we are not persuaded by the comment asserting that supervision is not the same as jurisdiction. A review of reference works indicates that the distinction between ''supervision'' and ''jurisdiction'' is not always clear, and that they are sometimes used to mean the same thing. For example, *Black's Law Dictionary* defines the two terms as follows:

''[S]upervision'': The act of managing, directing or overseeing persons or projects. (''direct'': * * * 3. To guide (something or someone); to govern.)

Black's Law Dictionary (7th ed. 1999).

''Jurisdiction'': 1. A government's general power to exercise authority over all persons and things within its territory * * * 3. A geographic area within which political or judicial authority may be exercised.

Id.

Burton's *Legal Thesaurus* gives as synonyms for ''supervision'':

Administration, care, charge, command, control, direction, government, gubernation, guidance, inspection, jurisdiction, management, oversight, procuratio, proctorage, regulation, steerage, stewardship, superintendence, surveillance.

William C. Burton, *Legal Thesaurus* (1980).

Burton gives as synonyms for ''jurisdiction'':

Authority, authority to hear and decide a case, capacity to decide the matter in issue, capacity to hear the controversy, command, control, decision-making power over the case, domain, domination, dominion, extent of authority, grasp, *jurisdictio*, legal authority, legal power, legal power to decide a case, legal right, power, province, purview, range, reach, realm, reign, sovereignty, sphere, superintendence, supervision, territorial range of authority, territory.

Id.

Another legal reference book, *Words and Phrases*, includes the following discussions of the meaning of ''jurisdiction'':

Jurisdiction is controlling authority; the right of making and enforcing laws or regulations; the capacity of determining rules of action or use, and exacting penalties; the function or capacity of judging or governing in general; the inherent power of decision or control. *People* v. *Pierce*, 41 N.Y.S. 858, 860, 18 Misc. 83.

* * * * *

The word ''jurisdiction'' in its technical sense is not synonymous with ''authority'' although it is sometimes employed in that sense. *In re Perez*, 1 So.2d 537, 540, 197 La. 334.

* * * * *

The term ''jurisdiction'' imports authority to expound or apply laws. *Max Ams, Inc.* v. *Barker*, 170 S.W.2d 45, 48, 293 Ky. 698.

* * * * *

The term ''jurisdiction'' originally included only right to hear and determine concerning subject matter in particular case, but is now frequently used as meaning authority to do particular thing or exercise a power in a particular manner. *Fortenbury* v. *Superior Court in and for Los Angeles County*, 106 P.2d 411, 412, 16 Cal.2d 405.

* * * * *

The word ''jurisdiction'' is frequently used as meaning authority to do the particular thing done * * * *Evans* v. *Superior Court in and for the City of San Francisco*, 96 P.2d 107, 116.

Words and Phrases, ''Jurisdiction'' (2001).

[16] In effect, it appears that the court may be saying *if* tribal abstention did not apply and *if* the issue before us were taxing jurisdiction over allotted lands, and *if* we were the trial court, this would be our holding on the Nation's taxing jurisdiction over allotted lands.

These references indicate that the two words are not necessarily synonymous, but that they may be used as synonyms and both words can mean command, control, or superintendence. ''Jurisdiction'' may be said to typically refer to a government's general power to exercise authority over persons and things within its territory. As discussed above, ''supervision'' may be said to typically refer to regulating, overseeing, or superintending persons or things.

As discussed above, in *Valencia Energy Co.*, the IBLA rejected an argument that jurisdiction was a prerequisite for supervision. The operator had argued the Nation lacked jurisdiction over lands outside the boundaries of the reservation, and thus that those lands could not constitute lands ''supervised by an Indian tribe'' for the purposes of SMCRA. Further, the operator argued that the Nation lacked supervisory authority over the land, arguing that the Nation had conveyed all of its rights to the surface in a lease for approximately 50 years. The IBLA concluded that OSM's analysis was sufficient to support a finding of supervision in fact; and also that ownership of the surface estate was sufficient to compel a conclusion of ''supervision'' as a matter of law under SMCRA (despite the lease under which the Nation had granted full use of the surface for mining purposes).

However, there is nothing inherent in any of the definitions of ''jurisdiction'' and ''supervision'' that precludes jurisdiction from being either an aspect of supervision or a basis for supervision. Thus, for example, jurisdiction may be a prerequisite for regulation, and may be a concomitant of sovereignty, and if a tribe has regulatory authority over lands or has sovereignty over lands, then it is certainly possible that the tribe may supervise those lands. In summary, we conclude that the comment attempting to distinguish between the terms ''supervision'' and ''jurisdiction'' is not particularly helpful, and our review of references and definitions indicates that they do not compel the conclusion advocated by the comment.

P&M notes that the Navajo Nation is the only Indian tribe in the approved Navajo Land Consolidation Area, and asserts that, therefore, a valid rulemaking will require a specific finding by the Secretary that the allotment lands subject to the proposed rule are supervised by the Navajo Nation. However, P&M asserts that neither the Navajo Nation nor OSM has offered or is able to offer any facts to support this critical finding. P&M urges that it is clear that the Navajo Nation has no power of direction or authority. P&M asserts that numerous Federal courts, including the United States Supreme Court, have held that

> ''[l]ands allotted to be held in trust for the sole use and benefit of the allottee or his heirs are during the trust period under the exclusive jurisdiction and control of Congress for all governmental purposes relating to the guardianship and protection of the Indians.'' And; ''[t]rust allotments to individual Indians remain under exclusive jurisdiction and control of Congress during the trust period for all purposes relating to guardianship and protection of Indians.''

P&M cites annotations to 18 U.S.C.A. Section 1151, n.14 as authority for these statements. P&M asserts that thus it is clear that ''Congress, through it's agent, The [sic] Bureau of Indian Affairs, supervises the allotment lands within the Tribal Consolidation Area.''

We agree that the intent of the proposed rule is to determine whether off-reservation Navajo allotted lands within the approved Navajo land consolidation area are supervised by the Navajo Nation and thus are Indian lands under the SMCRA definition of ''Indian lands.'' However, as discussed above, we conclude that the record does not support a determination as to supervision of those allotted lands, and that such a determination is appropriately made on a case-by-case basis. Further, the cases quoted in the annotations to 18 U.S.C.A. 1151, n. 14, concerning the Federal Government's exclusive jurisdiction and control over allotted lands ''for all governmental purposes relating to the guardianship and protection of the Indians'' do not clearly preclude a tribe from regulating allotted lands and their use for other purposes. Indeed, the cases addressing the Indian country status of allotted lands specifically and consistently characterize allotted lands as a category of Indian country, and state that Indian country (not excluding allotted lands) is subject to the primary jurisdiction of the Federal Government and the Indians. *See Venetie*, 522 U.S. 531, and the cases cited therein. We are also mindful of the holding in *Watchman* that 18 U.S.C. 1151 was an express Congressional delegation of civil authority over Indian country to the tribes, and the statement in *Watchman* that the Navajo Nation has authority to tax any mining activities taking place in Indian country without violating any express jurisdictional prohibitions. 52 F.3d 1541. The court noted that the Navajo trust allotments are Indian country by definition under 18 U.S.C. 1151(c). 52 F.3d 1535. (The decision also specifically noted that this statute had been amended by Congress to conform to a Supreme Court decision that determined that trust allotments are subject to Federal jurisdiction. 52 F.3d 1541.) And, as discussed above, the decision referred in a footnote to the court's understanding that the Navajo Nation has the authority to apply its tax to the coal produced on the 47% of the South McKinley mine lying within the Navajo trust allotments. 52 F.3d 1531,1542 n.11. Thus, these decisions do not support the commenter's assertion that the Nation has no authority on allotted lands.

P&M asserts that the Navajo Nation does not have title to the allotted lands or have any other legal interest in them; that there are no laws or regulations that grant to the Navajo Nation supervisory authority over allotted lands; and that the Nation cannot establish any significant or substantial or real control over the allotted lands within the tribal consolidation area. P&M also proposes that OSM should address the following issues when determining whether the Navajo Nation supervises off-reservation allotments: The existence of Nation contractual rights or other authority, or activities, that establish that the Nation has overseen or exercised authority over those lands; and the extent to which individual allottees consider their lands ''supervised'' by the Nation.

Because we have decided not to adopt the proposed rule and anticipate that the question of tribal supervision will be properly addressed in case-by-case determinations, those determinations may address relevant information addressing P&M's concerns. Thus, in any such determinations concerning Navajo Nation supervision of allotted lands interested persons may submit for consideration all relevant information concerning matters such as title to the lands; applicable statutes, regulations, treaties, and executive orders; and all other information concerning Navajo supervision. We anticipate that relevant information would include evidence related to whether the Nation has the right or authority of overseeing, or acts to oversee the lands; and to whether the Nation has the right or authority to regulate or superintend what is done affecting those lands, or does in fact regulate or superintend what is done affecting the lands. To the extent the types of information referenced by P&M are submitted and are relevant to these matters, they may be addressed in any further case-by-case proceedings.

D. What Procedural Questions Does the Record Raise About the Proposed Rulemaking?

1. Is a Formal Adjudication Required on the Issue Presented in the Proposed Rule?

P&M asserts that the question of tribal supervision of allotted lands should not be decided by an informal rulemaking process, but rather by formal adjudication, in order to allow interested parties the opportunity to fully develop evidence and fully address the facts and circumstances related to the Nation's contention that it supervises allotted lands.

As noted above, we believe the parties to the settlement and MOU contemplated that the rulemaking was to address the Indian lands status of the off-reservation allotted lands in the Navajo land consolidation area. However, as discussed *infra*, the record is not clear as to a number of the relevant facts. As to the relevant factors addressed by the commenters, some comments allege that the Nation does have the relevant right or authority, or functional role, and some allege that they do not; but generally there is little or no evidence or other support in the record for either set of allegations. A more complete record is needed to establish whether or not the Nation supervises the allotted lands in question.

Whether the Nation supervises allotted lands in the Navajo land consolidation area, so that those lands would be deemed Indian lands under SMCRA, may be properly addressed in a proceeding in which all interested persons may provide relevant information and address the significance and weight to be attached to that evidence. However, we do not believe that a formal quasi-judicial administrative hearing would be required for such a determination in all cases. Less formal procedures may develop an appropriate record. For example, the procedures for SMCRA permitting decisions may assure an adequate record, since those procedures ensure all interested persons ample opportunity to participate in the permitting process. For example, the Indian lands status of certain off-reservation allotted lands, which are within the permit area of the south McKinley mine, had been the subject of the *P&M* case. *Pittsburg & Midway Coal Mining Co.* v. *OSM*, Docket No. TU 6–2–R, *Dismissed without prejudice*, February 2, 2007 (OHA Departmental Hearings Div.). We believe that the record in such a case could be developed to fully address the Indian lands status issues.

2. Are We Taking Administrative Notice of Materials as Requested by Commenters?

As discussed in more detail below, the Navajo Nation refers to documents that it believes are relevant to this rulemaking, and requests that we take administrative notice of the materials. Some of those documents were submitted in evidence in proceedings that occurred more than a decade ago. Because of the age of the materials, and because the Nation has indicated the materials are voluminous, we believe it is not in the interest of fairness to take administrative notice of those materials without full notice and opportunity for all interested persons to review, evaluate, and comment on them. We believe that all interested persons and the decision maker should have ample opportunity to address the weight and relevance to be attributed to these materials, particularly to the extent that they would be submitted to establish supervision in law or in fact.

The Navajo Nation requests that we take administrative notice of the Navajo Nation Code (''NNC'') and its laws which the Nation maintains demonstrate the Nation's supervision of allotted lands. Further, the Navajo Nation asserts that it submitted extensive proof of its active supervision of the trust allotments, including an unrebutted factual showing of tribal jurisdiction over the allotments, in two cases: *New Mexico, ex. rel. Energy and Minerals Dep't, Mining & Minerals Div.* v. *United States Dep't of the Interior*, No. Civ. 84–3572 (D.D.C. 1985), *aff'd in part and rev'd in part*, 820 F.2d 441 (D.C. Cir. 1987), *settlement approved after remand and transfer,* No. Civ. 87–1108 JB, 19 Indian L. Rep. 3119 (D.N.M. 1992) (''*New Mexico* v. *DOI*''); and *Pittsburg & Midway Coal Mining Co.* v. *OSMRE and Navajo Tribe*, IBLA No. 87–577. The Nation asks that we take notice of and include in the administrative record the exhibits filed by the Navajo Nation in *New Mexico* v. *DOI*, and the administrative record filed and discovery completed in *Navajo Nation* v. *Babbitt*, No. Civ. 89–2066 (D.D.C.) [citing *United States* v. *American Tel. & Tel. Co.*, 83 F.R.D. 323, 333–34 (D.D.C. 1979)].

In the interest of administrative fairness we will not take administrative notice of the Navajo Nation's exhibits in the referenced Federal court litigation, and will not take administrative notice of the NNC. The Navajo Nation is requesting administrative notice of these materials as probative of supervision—the central issue in this rulemaking. In any case-by-case determination the Navajo Nation may offer these materials in evidence and their merits may be addressed as appropriate by interested persons. These materials are not otherwise readily available to interested persons. The exhibits of which the Nation requests that we take administrative notice were apparently filed with the respective Federal district courts between 10 and 20 years ago. The files of such old closed Federal cases are typically routinely archived by the courts and may even have been routinely destroyed by the archives because of the age of the records. Further, given the age of these materials, it is unclear whether they would accurately reflect current law and current conditions. (And, because of the age of these records, even if they still exist and could be retrieved by the courts, it does not appear reasonable to expect interested persons to timely request and review them.) We located and reviewed a copy of the NNC, dated 1995, in the Department of the Interior Natural Resources Library. That copy was obtained by the Library in 1999. We have no information as to what, if any, changes may have been made to the NNC since either 1995 or 1999. Further, the copies of affidavits or declarations actually submitted by the Nation primarily concern social services to allottees, rather than supervision of allotted lands, and thus appear to be of limited relevance.

Administrative notice (or ''official notice'') is an administrative law device that is used to enter information into the record that has not been proved through hearing methods.[17] Effectively, the decision maker may consider some commonly understood information as if it had been documented, submitted in evidence, and proved (although it has not actually been).[18]

[17] *See* Charles Koch, *Administrative Law & Practice* § 5.55(1) at 204 (2d ed. 1997). Administrative notice is generally used to allow a decision maker to take notice of commonly acknowledged facts. In addition to commonly known facts, an administrative agency can take notice of technical or scientific facts that are within the agency's area of expertise. *See McLeod* v. *Immigration & Naturalization Serv.*, 802 F.2d 89, 93 n.4 (3rd Cir. 1986) [citing *NLRB* v. *Seven-Up Bottling Co.*, 344 U.S. 344 (1953)].

[18] In hearings before the Department of the Interior Office of Hearings and Appeals (OHA), 43 CFR 4.24 allows administrative notice ''of the public records of the Department of the Interior and of any matter of which the courts may take judicial notice.'' In hearings subject to the Administrative Procedure Act, 5 U.S.C. 556(e) (the ''APA''), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' This

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With regard to the Navajo Nation's previous exhibits, in determining whether administrative notice should be taken, agencies have distinguished between ''adjudicatory'' facts and ''legislative'' facts. Adjudicatory facts pertain to the immediate parties, whereas legislative facts are general and do not concern the immediate parties. *See 3* Kenneth Davis, *Administrative Law Treatise* § 10.6 at 150 (1984). In practice, the admission of adjudicatory facts depends upon whether the facts are central to the controversy. If they are, they usually have to be proved, but if they are not, they may be officially noticed. *See* Koch, *supra*, at 207. Agencies more typically notice legislative facts if the parties are given notice of their use and are given an opportunity for rebuttal. See Koch, *supra,* at 206. The use of adjudicatory facts is more restricted. Under the Federal Rules of Evidence (which govern *judicial* notice but also provide useful guidance in this case, in light of 43 CFR 4.24, *supra*), adjudicatory facts that are ''not subject to reasonable dispute'' may be noticed, but all other adjudicatory facts must be proved. We believe that the Nation's exhibits from previous proceedings would be intended to establish whether the Navajo supervise the allotted lands (and as discussed below, in this case might be considered both adjudicatory facts and legislative facts). The nature of the proposed rule amply demonstrates that the issues of whether the Navajo Nation supervises these off-reservation allotted lands, and, more generally, what interests and roles the Navajo Nation has on these lands, are subject to reasonable dispute. These are issues central to the proposed rule, and are disputed by commenters. Therefore, we conclude that it would not be fair or appropriate to take administrative notice as requested by the Nation.

With regard to the NNC, arguably ''any information useful in deciding the adjudication may be noticed as long as no unfairness is created.'' Koch, *supra*, at 205. However, it is not clear whether the version of the code available to us at the location of the administrative record is current and complete. Further, the record before us does not clearly establish whether and in what way the code is implemented on allotted lands, or what the Nation's authority is to implement the code on off-reservation allotted lands, in light of any other law that may be applicable. Thus, there is an argument that, concerning the issues in this rulemaking, the terms and applicability of the NNC are both ''adjudicatory'' and ''legislative'' facts. In any case, we conclude that to take notice of these materials without further opportunity for examination and comment by all interested persons would be of questionable fairness and value.

In summary, the Nation and all other interested persons may submit all relevant and probative materials in any case-by-case determination. All such materials may then be examined and addressed by all interested persons as to their relevance and the weight to be given them concerning the ''Indian lands'' status of specific Navajo off-reservation allotted lands.

E. What Administrative, Operational, and Environmental Issues Did Commenters Raise Concerning the Proposed Rule?

The proposed change in the definition of Indian lands, if adopted, would have shifted SMCRA regulation from the State to OSM for all allotted lands located within the Navajo land consolidation area in New Mexico. Under the proposed rule change we would have assumed SMCRA jurisdiction on the 48 allotments included within the mine's so-called south area.

As we noted earlier, the McKinley Mine permit area straddles the boundary of the Navajo Reservation near the Arizona-New Mexico border. The portion of the permit that lies within the reservation boundaries and on an adjacent parcel of off-reservation Navajo fee lands is collectively referred to as the north area and is regulated by us. The remainder of the mine, the so-called south area, is composed of Federal, private, State, and allotted lands occurring in a complex checkerboard pattern and is regulated by the State of New Mexico.

State and industry commenters were very concerned that the proposed change in the definition of Indian lands would greatly increase the area subject to dual regulation at the McKinley Mine and thus further complicate regulation at the mine. One commenter maintained that the rule change would create a potential disincentive to continued mining at McKinley Mine and to future mining in other checkerboard areas of New Mexico. The same commenter asserted that the increase in dual regulation would be complex, burdensome, expensive, impractical and time-consuming and would undermine SMCRA's intent of ensuring efficient regulation and reclamation of coal mining operations. The commenter also cited specific issues of concern stemming from differences in State and OSM regulations and differing interpretations of rules.

Another commenter noted that certain difficulties associated with our assumption of jurisdiction in 1986 on the tribal fee lands at the McKinley south mine were illustrative of the types of problems that would arise from our adoption of the proposed rule change. The commenter cited numerous issues anticipated for any transfer of jurisdiction.

State and industry commenters also commented extensively on the bureaucratic inefficiencies and the additional administrative expenses for regulators and mine operators that they believe would result from the proposed rule change due to differences in State and OSM regulations and differing interpretations of regulatory requirements. They also expressed concern about the frequency of consultation that would be required, and about the confusion and delays they expected as the operator moves from section to section. In addition, they asserted that the proposed change in the definition of Indian lands would have serious adverse economic and financial consequences at the local, State, and Federal levels, including increased regulatory workloads and costs, potential loss of future mining and mining jobs, and lost royalty and tax revenue from State lands.

Although commenters' concerns about the effects of a complex regulatory scheme may reflect business and fiscal concerns, the complex land ownership patterns at the McKinley south mine, or elsewhere in the consolidation area in New Mexico, are not relevant to a determination of whether any or all of the allotted lands in the consolidation area are Indian lands. Further, we believe that determinations of the Indian lands status of consolidation area allotments are properly based solely upon application of the SMCRA standard. That standard requires consideration of relevant information concerning the nature and extent of the tribe's supervisory authority over the allotted lands. Any operational or administrative concerns about a determination could be addressed through coordination between OSM and the State on a site-specific basis.

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rulemaking is not directly subject to these procedural requirements, because it is not based on a hearing before an OHA board, nor does it involve a hearing subject to the cited provision of the APA. Nonetheless, the OHA procedures and the APA provisions were adopted because they ensure basic procedural fairness in agency decision making. Thus, these provisions provide useful guidance as to what may be generally regarded as procedures to ensure fundamental fairness in agency decision making.

F. What Other Questions Does the Record Raise About the Proposed Rulemaking?

1. Must Any Ambiguities Be Construed in Favor of Tribal Interests?

The Navajo Nation asserts that the Indian lands provisions of SMCRA are intended to benefit Indian tribes under the Federal trust responsibilities. The Nation asserts, in effect, that, if there is any ambiguity as to whether the Navajo interest in and authority over allotted lands amounts to supervision, applicable rules of statutory construction require that any ambiguities in the SMCRA Indian lands provisions should be construed in favor of tribal interests. The Nation cites *Bryan* v. *Itasca County*, 426 U.S. 373, 392–93 (1976); *Montana* v. *Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985); *Jicarilla Apache Tribe* v. *Andrus*, 687 F.2d 1324, 1332 (10th Cir. 1982); and *Star L. R. Co.* v. *Lujan*, 737 F. Supp. 103, 109 (D.D.C. 1990), *aff'd*, 925 F.2d 490, 18 Indian L. Rep. 2027 (DC Cir. 1991). The Nation asserts that these rules of statutory construction have a special corollary with respect to whether trust allotments are 'Indian lands' under exclusive tribal and Federal authority; and that any ambiguities in Federal legislation ''should be resolved in favor of limiting state jurisdiction.'' The Nation quotes *State* v. *Ortiz*, 105 N.M. 308, 311, 731 P.2d 1352, 1355 (Ct. App. 1986):

> The Supreme Court has implicitly recognized that stricter standards apply to federal agencies when administering Indian programs. * * * When the Secretary is acting in his fiduciary role rather than solely as a regulator and is faced with a decision of which there is more than one ''reasonable'' choice as that term is used in administrative law, he must choose the alternative that is in the best interest of the Indian Tribe.

The Nation cites: *Jicarilla Apache Tribe* v. *Supron Energy Corp.*, 728 F.2d 1555, 1567 (10th Cir. 1984), *dissenting opinion adopted as modified on reh'g*, 782 F.2d 855 (10th Cir. 1986) (en banc), *modified on other grounds*, 793 F.2d 1171 (10th Cir. 1986), *cert. denied* 479 U.S. 970 (1986).

Thus, the Nation argues that ambiguities in the definition of ''Indian lands'' must be resolved in favor of the Navajo Nation because if the allotments are not Indian lands they may be regulated by the states, ''contrary to the cornerstone of the special tribal/federal relationship.'' The Nation cites *New Mexico ex rel Energy and Minerals Dep't, Mining & Minerals Div.* v. *United States Dep't of Interior*, 820 F.2d 441, 445 (DC Cir. 1987), *settlement approved after remand and transfer*, No. Civ. 87–1108 JB, 19 Indian L. Rep. 3119 (D.N.M. 1992); and *Washington Dep't of Ecology* v. *United States EPA*, 752 F.2d 1465, 1470 (9th Cir. 1985). The Navajo Nation notes that the latter case stated that the trust responsibility ''arose largely from the federal role as a guarantor of Indian rights against state encroachment.''

We believe that, under SMCRA, we act solely as a regulator, and that the canon of construction referenced by the Nation does not apply to our interpretation of SMCRA's Indian lands provisions and implementing rules for purposes of implementing our regulatory responsibilities. Section 102(a) of the Act states that ''it is the purpose of this Act to establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' The Federal program for Indian lands is a component of this nationwide regulatory program, intended to ensure ''that all mining operations on Indian lands are conducted in accordance with permanent program standards until tribes are given the authority to seek and obtain primacy.'' 49 FR 38464 (September 28, 1984). The preamble to the final rulemaking adopting the Indian lands permanent program requirements discusses in some detail how responsibilities for Indian trust asset management and for tribal consultation remain with MMS, BLM, and BIA under their separate statutory authorities; and emphasizes that OSM is responsible for establishing a nationwide regulatory program for surface coal mining operations, of which the Indian lands program is one part, until tribes are authorized to assume primacy. 49 FR 38467–38469. The preamble makes clear that, when implementing the SMCRA Indian lands program, we are solely implementing the nationwide regulatory program. The authority and fiduciary responsibility to administer Indian trust assets were not affected by SMCRA or the Indian lands rule; they remain with MMS, BLM, and BIA, under their respective authorities. As a result, we do not understand the canon of construction articulated in *Ortiz* to apply by its terms to our implementation of SMCRA's Indian lands regulatory provisions.

However, we would reach the same conclusion on the proposed rule even if the canon set out in *Ortiz* did apply to our action on this matter. We are mindful that the nature and extent of the trust responsibilities of Federal agencies have been described in many different ways in court decisions. Some cases arguably take a very expansive view of Federal agency trust responsibilities. *See*, *e.g.*, *HRI* v. *United States EPA and Navajo Nation*, 198 F. 3d 1224, 1245–1247. Nonetheless, regardless of the applicability of any special canons of statutory construction, the record before us in this rulemaking is inadequate to support a determination as to whether the Navajo Nation supervises the off-reservation allotted lands within the approved Navajo land consolidation area.

2. Can a Tribe Supervise Lands Over Which a State Has Authority?

The comments of the Navajo Nation include extensive arguments concerning their position that states do not have general regulatory authority or governmental authority over Indian country, including allotted lands.

We conclude that these comments are not germane to the proposed rule because they do not address whether the Nation supervises allotted lands, in law or in fact. Rather, these comments relate to states' authority in Indian country and to Congress' views on states' ability or authority to regulate in Indian country. The proposed rule did not purport to analyze or define the nature or extent of the State's general authority or jurisdiction over off-reservation allotted lands. We have no authority to make such a determination. The SMCRA definition of ''Indian lands'' does not require that off-reservation lands will be considered Indian lands only if they are subject to no state regulation or authority of any kind. The proposed rule concerns only whether tribes supervise certain allotted lands, as a matter of law or as a matter of fact, and thus whether such lands are Indian lands for purposes of SMCRA. Thus, if a state has some authority on or interest in the lands this does not preclude properly considering the lands to be ''Indian lands'' for purposes of SMCRA. Because these comments about State authority or jurisdiction do not address the Nation's supervision of allotted lands the comments do not address the merits of the proposed rule and are not helpful.

The comments assume that state regulation of allotted lands under SMCRA is a dilution of the Federal trust responsibility because allowing state regulation delegates a trust responsibility to the state. We do not agree. If the Nation does not supervise the off-reservation allotted lands, then those lands are not Indian lands under SMCRA. Thus, if the allotted lands were found not to be supervised by the Nation, allowing state regulation would not delegate a fiduciary trust management responsibility to the state. However, if the Nation is found to

supervise the lands in question, those lands are Indian lands and are subject to the Federal Indian lands regulatory program.

The Navajo Nation maintains that 30 U.S.C. 1300(h) confirms that all Indian trust allotments must be considered ''Indian lands'' because it states ''nothing in this Act shall change the existing jurisdictional status of Indian lands.'' The Nation refers to the final conference committee report on SMCRA, which stated that this proviso was intended to preserve the existing jurisdictional status of off-reservation trust lands. H.R. Rep. No. 493, 95th Cong., 1st Sess. 114 (1977). The Navajo Nation asserts that, with respect to the off-reservation trust allotments at issue, it is clear that states could exercise no legitimate regulatory function in 1977 when SMCRA was enacted. The Nation asserts that in 1977 reclamation of surface coal mines on all Indian lands was covered by a comprehensive and exclusive (of states) Federal regulatory regime. The Nation references 25 CFR Part 177, Subpart B (1977), and General Accounting Office *Administration of Regulations for Surface Exploration, Mining, and Reclamation of Public and Indian Lands* 5–6 (1972). The Nation asserts that in 1977 state laws regulating or controlling the use or development of any trust land, including all off-reservation trust allotments, could not apply on allotments:

> Without specific authorization of the Secretary of the Interior, none of the laws, * * * or other regulations of any State or political subdivision thereof limiting, zoning, or otherwise governing, regulating, or controlling the use or development of any real * * * property * * * shall be applicable to any such property leased from or held or used under agreement with and belonging to any Indian * * * that is held in trust by the United States. * * *

25 CFR 1.4(a) (1977).

For several reasons we do not find these comments helpful. First, whether or not a state regulates allotted lands under other law the SMCRA definition of ''Indian lands'' still applies. See *Valencia*, which, as discussed above, concluded that SMCRA establishes the jurisdictional status quo for SMCRA purposes, although it does not affect the jurisdictional status quo for other purposes. 109 IBLA 66. Second, this comment is not germane to the proposed rule because it does not address the question of whether the Nation supervises off-reservation allotted lands, in law or in fact. Like the preceding comments, this comment asserts that the states had no legitimate jurisdiction or authority on allotted lands in 1977 and thus can have none now under SMCRA. Such assertions do not address whether a tribe supervises allotted lands for SMCRA purposes.

The Navajo Nation also asserts that the Department of the Interior had recognized by 1977 that Indian tribes had retained general regulatory authority over the trust allotments of their members. The Nation cites a memorandum opinion of the Solicitor, Department of the Interior: *Application of Local Building Codes to Indian Trust Property*, II Op. Sol. 2052 (1972) [*available at* 4 Indian L. Rep. 0–7 (1977)].

As discussed above, case law indicates that determinations of tribal authority or rights must be made on a case-by-case basis. The cited Solicitor's Opinion addresses, *inter alia*, the authority of a particular tribe in Washington State to regulate the use of tribal trust and individual allotted lands in that State. The opinion concludes that in that instance the tribe has the inherent authority to regulate the use of both tribal and individually held trust land. The opinion is not germane to this rulemaking because it does not concern supervision by the Nation of off-reservation allotted lands and the authority of each tribe must be examined based on the facts and law concerning that tribe.

3. Is the Proposed Rule Consistent With Past OSM Actions?

The Navajo Nation maintains that in the 1989 rule OSM justified its clarification of the status of these allotments in ''wholly contradictory ways.'' Specifically, the Nation noted that we stated on the one hand that:

> It is more appropriate that this jurisdictional issue [of off-reservation allotments] be addressed by rulemaking * * * rather than by quasi-judicial proceedings in which only parties and intervenors have standing.

1989 AR 3–4. On the other, the Nation asserts that we ''confessed'' that:

> A dispositive policy concerning the concept of tribal supervision of individual trust allotments * * * would have to encompass a highly complex set of potential issues and fact patterns, and is beyond the scope and purpose of this rulemaking. As stated earlier in this preamble, OSMRE will make such determinations on a case-by-case basis if and when the need arises.

1989 AR 5.

We agree that the quoted language could have been more precisely phrased; however, these materials are quoted out of context. We believe that careful examination of the 1989 rule preamble language indicates that we intended to say that whether off-reservation allotted lands in general may be ''Indian lands'' (because they may be ''supervised by a tribe'' for purposes of SMCRA) is properly addressed in a rulemaking; but whether specific off-reservation allotted lands are actually supervised by a particular tribe is best addressed on a case-by-case basis because of the potentially complex issues, law, and facts. We believe that this position is reasonable and continues to be valid.

NMA argues or implies that the proposed rule would conflict with a 1985 settlement that we entered with NMA, and would conflict with the intent of Congress.

Our interpretation of the 1985 settlement has not changed. See discussion *supra* of 54 FR 22182 (May 22, 1984). Neither the proposed rule nor this decision not to adopt the proposed rule is intended to change our interpretation of the 1985 settlement. As discussed above, we do not agree that the proposed rule or our decision not to adopt the proposed rule conflicts with the intent of Congress.

VII. What Is the Effect of This Notice?

We reach no conclusions on the Indian lands status under SMCRA of Navajo allotments in New Mexico. We intend this notice to provide guidance for any pending or subsequent action concerning the Indian lands status of allotted lands, but in any such action we will consider arguments or information concerning the merits or applicability of this approach. We intend this notice to aid interested persons in determining what information may be relevant in such action. Further, we intend to advise interested persons of the interpretation of existing law that we anticipate implementing in any such action. *See*, *e.g.*, *Christensen* v. *Harris County*, 529 U.S. 576 (2000); *Stinson* v. *United States*, 508 U.S. 36 (1993); *Williams* v. *United States*, 503 U.S. 193 (1992); *Pacific Gas & Electric Co.* v. *FPC*, 506 F.2d 33 (D.C. Cir. 1974).

VIII. How Will This Issue Be Addressed After This Notice?

A. Will This Issue Be Addressed by Case-by-Case Determinations?

Existing procedures allow for case-by-case determinations of the Indian lands status of specific allotted lands in any actions in which that status might arise. We anticipate that any such determinations would most likely arise in permitting decisions that involve allotted lands.

As discussed above, a case that had been pending before the Office of Hearings and Appeals concerning the Indian lands status of allotted lands

within the permit area of the South McKinley mine was the only permitting action where SMCRA jurisdiction over allotments has been raised. That case had been stayed pending final action on this rulemaking and had been continued since 1992. *Pittsburg & Midway Coal Mining Co.* v. *OSM* (OHA Docket No. TU–6–2–PR). The parties contemplated that final action on this rulemaking might obviate the need for further action in that case. However, as discussed above, that case has been dismissed without prejudice. If a similar case is filed or that case is re-instated, all parties would have ample opportunity to submit and evaluate relevant evidence, cross-examine witnesses, and submit arguments. Judicial review would be available.

B. Will We Propose Amendments of Our Rules To Set Out Specific Procedures for Case-by-Case Determinations on This Issue?

We considered the option of developing a process for making case-by-case determinations of whether particular allotted lands are supervised by a tribe in lieu of developing a national rule that would govern all instances. However, there are many different possible procedural contexts in which this issue might be raised. Devising amendments to all the procedural rules under which this issue might be raised, in order to specify how such a determination would be addressed, would not be appropriate in light of the low probability that any particular procedure might be used for such a determination in the foreseeable future.

Dated: April 5, 2007.

C. Stephen Allred,

Assistant Secretary, Land and Minerals Management.

[FR Doc. E7–7647 Filed 4–24–07; 8:45 am]

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Federal Register

Wednesday,
April 25, 2007

Part IV

The President

Federal Register
Vol. 72, No. 79
Wednesday, April 25, 2007

Presidential Documents

Title 3—

The President

Proclamation 8130 of April 20, 2007

National Crime Victims' Rights Week, 2007

By the President of the United States of America

A Proclamation

National Crime Victims' Rights Week is an opportunity to underscore our commitment to protecting the rights of crime victims and to recognize those who bring hope and healing to these individuals and their families. During this week, we especially remember and mourn the victims of the senseless acts of violence at Virginia Tech. A grieving Nation honors the innocent lives lost in this tragedy, and we pray for the families of the victims.

My Administration is committed to helping safeguard our communities and to ensuring that the rights of those who have been victimized by crime are protected. My Family Justice Center Initiative, announced in 2003, is now providing assistance and services for victims of domestic violence at centers nationwide. Additionally, last year I signed into law the Adam Walsh Child Protection and Safety Act of 2006, which helps protect our youth by increasing the penalties for crimes against children and creating a National Child Abuse Registry. My Administration also supports a Crime Victims' Rights Amendment to the Constitution to further protect the basic rights of crime victims.

During National Crime Victims' Rights Week and throughout the year, we remember and are grateful to our Nation's victim service providers, volunteers, law enforcement, and community organizations that support victims of crime through their commitment and compassion. To find out more information about victims' rights and volunteer opportunities, individuals may visit www.crimevictims.gov. Together, we can help ensure that crime victims have the rights and protections they deserve.

NOW, THEREFORE I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 22 through April 28, 2007, as National Crime Victims' Rights Week. I encourage all Americans to help raise awareness and promote the cause of victims' rights in their communities.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of April, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 07–2066
Filed 4–24–07; 8:52 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 8131 of April 20, 2007

National Park Week, 2007

By the President of the United States of America

A Proclamation

Americans take great pride in our country's natural beauty, and our Nation is blessed to have a park system of more than 80 million acres that belongs to us all. During National Park Week, we underscore our dedication to conserving these national treasures, and we pay tribute to the dedicated employees and volunteers of the National Park Service who care for them.

Established in 1916, the National Park Service now oversees a National Park System that has grown to include almost 400 sites, with parks in nearly every State. These parks protect beautiful landscapes, tell important stories about our country's past, and encourage our citizens to conserve our natural environment and celebrate our national history. They are places to learn, exercise, and spend time with family and friends. Through her work with the Junior Rangers and the National Park Foundation, First Lady Laura Bush and others are working to expand access to the riches of our parks.

In anticipation of the 100th anniversary of the National Park Service in 2016, my Administration has launched the National Parks Centennial Initiative. The initiative calls upon government, the private sector, and our citizenry to share in an effort to help prepare our parks for another century of conservation, preservation, and enjoyment. We will work to enhance park habitats, expand visitor services, increase educational opportunities, implement new technologies, and hire additional seasonal park rangers. By maintaining and improving our park system, we can ensure that our national parks will thrive for the next 100 years and beyond.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 22 through April 29, 2007, as National Park Week. This year's theme is ''Your National Parks: Explore, Learn, and Protect.'' I invite all my fellow citizens to join me in celebrating America's national parks by visiting these wonderful spaces, discovering all they have to offer, and becoming active participants in park conservation.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of April, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 07–2067
Filed 4–24–07; 8:52 am]
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Federal Register

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CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 25, 2007

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Propiconazole; published 4-25-07

Water programs:
- Pollutants analysis test procedures; guidelines—
  - Wastewater and sewage sludge biological pollutants; analytical methods; published 3-26-07

HOMELAND SECURITY DEPARTMENT

Chemical facility anti-terrorism standards:
- Chemical security assessment tool system access; registration process recommendation; published 4-25-07

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Cessna; published 4-20-07

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
- Dual consolidated losses
  - Correction; published 4-25-07
  - Correction; published 4-25-07

VETERANS AFFAIRS DEPARTMENT

Vocational rehabilitation and education:
- Vocational Rehabilitation and Employment Program; initial evaluations; published 3-26-07

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Avocados grown in South Florida; comments due by 4-30-07; published 3-30-07 [FR E7-05792]

Cotton classing, testing, and standards:
- Classification services to growers; 2007 user fees; comments due by 5-4-07; published 4-19-07 [FR E7-07401]

Grapes grown in southeastern California; comments due by 5-1-07; published 4-16-07 [FR E7-07179]

Popcorn promotion, research, and consumer information order; section 610 review; comments due by 4-30-07; published 2-27-07 [FR E7-03262]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

National Veterinary Accreditation Program; comments due by 4-30-07; published 2-27-07 [FR E7-03256]

Plant-related quarantine, domestic:
- Phytophthora ramorum; comments due by 4-30-07; published 2-27-07 [FR 07-00892]

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Rural Business Investment Program; administrative provisions; comments due by 4-30-07; published 3-29-07 [FR 07-01530]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Rural Business Investment Program; administrative provisions; comments due by 4-30-07; published 3-29-07 [FR 07-01530]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Gulf of Alaska rockfish; comments due by 4-30-07; published 4-16-07 [FR E7-07193]
  - North Pacific groundfish; comments due by 4-30-07; published 3-29-07 [FR E7-05826]
- Atlantic highly migratory species—
  - Atlantic bluefin tuna; comments due by 5-4-07; published 4-4-07 [FR E7-06259]
- Northeastern United States fisheries—
  - Northeast multispecies; comments due by 5-1-07; published 4-16-07 [FR 07-01882]
  - Northeast multispecies; comments due by 5-1-07; published 4-16-07 [FR 07-01883]
- Western Pacific fisheries—
  - Western Pacific precious corals fisheries; control date; comments due by 5-1-07; published 3-2-07 [FR E7-03702]

DEFENSE DEPARTMENT

Secretary of Defense Office files; historical research policies and procedures; comments due by 4-30-07; published 2-28-07 [FR E7-03021]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric utilities (Federal Power Act):
- Wave, current, and instream new technology hydropower projects; preliminary permits; interim policy statement; comments due by 4-30-07; published 3-1-07 [FR E7-03549]

ENVIRONMENTAL PROTECTION AGENCY

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- Acrylic and modacrylic fibers production, carbon black production, lead acid battery manufacturing, wood preserving, etc.; comments due by 5-4-07; published 4-4-07 [FR E7-05790]
- General provisions; comments due by 5-4-07; published 3-5-07 [FR E7-03758]
- Shipbuilding and ship repair operations; comments due by 4-30-07; published 2-27-07 [FR E7-03311]

Air pollution control; new motor vehicles and engines:
- Heavy duty engines; onboard diagnostic systems and requirements; comments due by 5-4-07; published 3-22-07 [FR E7-05266]

Air quality implementation plans; approval and promulgation; various States:
- Indiana; comments due by 4-30-07; published 3-29-07 [FR E7-05655]
- Ohio; comments due by 4-30-07; published 3-29-07 [FR E7-05809]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts; comments due by 4-30-07; published 2-28-07 [FR E7-03118]
  - Correction; comments due by 4-30-07; published 3-5-07 [FR Z7-03118]
- Halosulfuron-methyl; comments due by 4-30-07; published 2-28-07 [FR E7-03205]
- Orthosulfamuron; comments due by 4-30-07; published 2-28-07 [FR 07-00898]
- Sethoxydim; comments due by 4-30-07; published 2-28-07 [FR E7-03010]

Toxic substances:
- Significant new uses—
  - 2-Thiazolidinone, etc.; comments due by 4-30-07; published 3-29-07 [FR E7-05797]

GENERAL SERVICES ADMINISTRATION

Federal Management Regulation:
- Federal asset sales; personal property sales; comments due by 5-3-07; published 4-3-07 [FR E7-06068]

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Child Care and Development Fund:
- Error rate reporting; comments due by 5-1-07; published 3-2-07 [FR E7-03664]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:
- Appeals process; provider and supplier applications for enrollment or renewal; determinations; comments due by 5-1-07; published 3-2-07 [FR 07-00870]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
- Great Lakes Naval Training Center Harbor, Chicago, IL; comments due by 5-4-07; published 4-19-07 [FR E7-07416]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 1002/P.L. 110–19

Older Americans Reauthorization Technical Corrections Act (Apr. 23, 2007; 121 Stat. 84)

Last List April 24, 2007

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